

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RECEIVED
2017 FEB 21 AM 10:50
OFFICE OF THE
EXECUTIVE SECRETARIAT

Docket ID: EPA-HQ-OAR-2016-0544

Dear Sir or Madam:

As an employee in the fuels industry, I am writing today in response to EPA's proposed denial to move the point of obligation under the Renewable Fuels Standard (RFS).

I am extremely concerned about EPA's proposed denial to move the point of obligation further downstream in the fuel supply chain to rack sellers. This is a serious issue that threatens the viability of merchant refiners, such as HollyFrontier Tulsa Refining LLC in Tulsa, Oklahoma where I am employed. These refineries provide jobs and tremendous economic support to their surrounding communities. The Tulsa Refinery employs 650 people in stable, well-paying jobs, and is one of the most important contributors to our local economy. The current RFS system is punishing merchant refiners by putting us at a competitive disadvantage which is an unintended consequence of the RFS program.

Presently EPA makes refiners and importers of petroleum products responsible for certifying blending of biofuels and petroleum products regardless of their ability to physically blend, or influence blending of their finished products. The disconnect that exists by obligating refiners without consideration of their ability to blend renewable fuels is the primary flaw within the RFS program. Merchant refineries like ours in Tulsa own limited downstream infrastructure, and no retail stations. Because of this logistical reality, my company must acquire Renewable Identification Numbers (RINs) on the open market to satisfy our annual required blending requirement by EPA.

In 2016 HollyFrontier's refineries, including Tulsa, spent approximately \$250 million on RIN purchases. This cost represents a greater amount than was spent on total payroll for more than 2,700 for employees like me. Simply put, these dollars do nothing to advance the goals of the RFS program, enable greater investment in our facilities, or increase wages and take home pay.

I request that the EPA act to move the Point of Obligation from refiners and importers to rack sellers which will better align ability to comply with the annual volumes mandated by EPA, and greatly reduce RIN market volatility.

Thank you for your consideration in this manner.

Sincerely,

(b) (6)



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10 FEB 2017 PM 5:21



U.S. ENVIRONMENTAL PROTECTION AGENCY

1200 PENNSYLVANIA AVE NW

WASHINGTON, DC 20460

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RECEIVED

2017 FEB 21 PM 2:35

OFFICE OF THE
EXECUTIVE SECRETARIAT

February 11 2017

Office of the Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington DC 20460

Dear Administrator:

I am writing to you in regarding the EPA's continued embargo on Mercedes Benz diesel models.

I ordered a new Mercedes Benz GLS 350 diesel in January of 2016. My car was completed at the US manufacturing plant in Alabama ...and has been setting on a parking lot since June 2016.

Supposedly, the hold up has been do the VW diesel scandal. And now, the Mercedes Benz is the new EPA target.

Surly, in 7 months, the EPA could move forward on releasing these cars?

In my home town alone (a small community and small dealership) it has cost them the sale of 28 cars in 2016. Let's translate that in to dollars and cents for our local governments. On average, based on the cost of these cars, the State of West Virginia lost approximately \$105,000 in taxes. The local city lost approximately \$18,900 in B&O taxes. Now compute that towards every Mercedes dealer across the country (most of which are much larger than my local dealer). The tax revenue lost is staggering.

In my home state, our government faces a short fall of nearly 500 million dollars. In our state, every penny counts.

This issue is far more than me buying a new car. It is effect the tax base of our local government in a very severe way.

I am writing asking you to expedite the release of these cars before they become antiques. Oddly, the Mercedes I am driving today....has the exact same engine that you now won't approve.

I am eagerly awaiting a reply.

Sincerely,

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PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL



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FEB 21 2017

RETURN RECEIPT
REQUESTED

OFFICE OF THE ADMINISTRATOR
ENVIRONMENTAL PROTECTION
AGENCY
1200 PENNSYLVANIA AVE NW
WASHINGTON DC 20460

1200 PENNSYLVANIA AVE NW
WASHINGTON DC 20460
OFFICE OF THE ADMINISTRATOR
ENVIRONMENTAL PROTECTION
AGENCY
1200 PENNSYLVANIA AVE NW
WASHINGTON DC 20460



INTERNATIONAL UNION OF OPERATING ENGINEERS

LOCAL 351

111 E. Coolidge • Borger, Texas 79007 • Phone 806.274.4501 • Fax 806.274.7305
6967 Commerce Ave. • El Paso, Texas 79915 • Phone 915.771.0224 • Fax 915.771.9018
58 Broadlawn • Ardmore, Oklahoma 73402 • Phone 580.223.8854 • Fax 580.223.0376

Affiliated with the American Federation of Labor and Congress of Industrial Organization
Chartered November 1, 1941

February 15, 2017

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC 20460

Docket ID: EPA-HQ-OAR-2016-0544

Dear Sir or Madam:

REC-51
2017 FEB 22 PM 12:21
OFFICE OF THE
EXECUTIVE SECRETARIAT

On behalf of the 250 brothers and sisters of IUOE Local 351 supporting HollyFrontier Corporation's Navajo Refining complex in Artesia and Lovington, New Mexico I write to support the petition to change the point of obligation under the Renewable Fuel Standard.

EPA's decision to place the point of compliance on refiners, regardless of their ability to influence blending of biofuels with gasoline and diesel, is a severe unintended consequence of the RFS program. This decision endangers the livelihood for merchant refiners like the Navajo complex. Jobs at Navajo are high-wage paying careers in domestic manufacturing that are more stable than many others here in a state where opportunity is often dependent upon commodity prices.

Moving the point of obligation further downstream will make the RFS program more functional and importantly remove a severe, punitive, unintended consequence that threatens the viability of merchant refiners and the union jobs provided. My union believes this will hurt our country's ability to manufacture our own transportation fuels and impact thousands of families who rely on these careers.

We ask that EPA act quickly to begin a rulemaking which will move the point of obligation further downstream in the supply chain.

Thank you for your consideration in this matter.

Sincerely,

Randall G Griffin
12th Vice President
Business Manager, Local 351
International Union of Operating Engineers



INTERNATIONAL UNION OF
OPERATING OF ENGINEERS LOCAL 351
111 EAST COOLIDGE / BORGER, TEXAS 79007

ADDRESS SERVICE REQUESTED

AMARILLO TX 791

15 FEB 2017 PM 2:18



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Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC 20460

FEB 21 2017



Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Docket ID: EPA-HQ-OAR-2016-0544

REC-3
2017 FEB 22 PM 12:21
OFFICE OF THE
EXECUTIVE SECRETARIAT

Dear Sir or Madam:

As an employee in the fuels industry, I am writing today in response to EPA's proposed denial to move the point of obligation under the Renewable Fuels Standard (RFS).

I am extremely concerned about EPA's proposed denial to move the point of obligation further downstream in the fuel supply chain to rack sellers. This is a serious issue that threatens the viability of merchant refiners, such as HollyFrontier Cheyenne Refining LLC in Cheyenne, Wyoming where I am employed. These refineries provide jobs and tremendous economic support to their surrounding communities. The Cheyenne Refinery employs approximately 300 people in stable, well-paying jobs, and is one of the most important contributors to our local economy. The current RFS system is punishing merchant refiners by putting us at a competitive disadvantage which is an unintended consequence of the RFS.

Presently EPA makes refiners and importers of petroleum products responsible for certifying blending of biofuels and petroleum products regardless of their ability to physically blend, or influence blending of their finished products. The disconnect that exists by obligating refiners without consideration of their ability to blend renewable fuels is the primary flaw within the RFS program. Merchant refineries like ours in Cheyenne own limited downstream infrastructure, and no retail stations. Because of this logistical reality, my company must acquire Renewable Identification Numbers (RINs) on the open market to satisfy our annual required blending requirement by EPA.

In 2016 HollyFrontier's refineries, including Cheyenne, spent approximately \$250 million on RIN purchases. This cost represents a greater amount than was spent on total payroll for more than 2,700 for employees like me. Simply put, these dollars do nothing to advance the goals of the RFS program, enable greater investment in our facilities, or increase wages and take home pay.

I request that the EPA act to move the Point of Obligation from refiners and importers to rack sellers which will better align ability to comply with the annual volumes mandated by EPA, and greatly reduce RIN market volatility.

Thank you for your consideration in this manner.

Sincerely,

(b) (6)



The HollyFrontier Companies
Frontier El Dorado Refining LLC
P.O. Box 1121
1401 Douglas Road
El Dorado, KS 67042



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KS 67201
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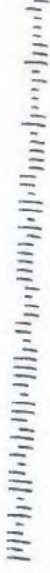


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Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

20460-



Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Docket ID: EPA-HQ-OAR-2016-0544

REC-11
2017 FEB 22 PM 12:20
OFFICE OF THE
EXECUTIVE SECRETARIAT

Dear Sir or Madam:

As an employee in the fuels industry, I am writing today in response to EPA's proposed denial to move the point of obligation under the Renewable Fuels Standard (RFS).

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Thank you for your consideration in this manner.

Sincerely,

(b) (6)



The HollyFrontier Companies
Frontier El Dorado Refining LLC
P.O. Box 1121
1401 Douglas Road
El Dorado, KS 67042

INCLUTS

KS 67042

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ZIP 67201

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Administrator 1107A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW.
Washington DC 20460

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2017 FEB 22 PM 12: 22
OFFICE OF THE
EXECUTIVE SECRETARIAT

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Docket ID: EPA-HQ-OAR-2016-0544

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As an employee in the fuels industry, I am writing today in response to EPA's proposed denial to move the point of obligation under the Renewable Fuels Standard (RFS).

I am extremely concerned about EPA's proposed denial to move the point of obligation further downstream in the fuel supply chain to rack sellers. This is a serious issue that threatens the viability of merchant refiners, such as HollyFrontier Navajo Refining LLC in Southeast New Mexico where I am employed. These refineries provide jobs and tremendous economic support to their surrounding communities. The Navajo Refinery employs approximately 700 people in stable, well-paying jobs, and is one of the most important contributors to our local economy. The current RFS system is punishing merchant refiners by putting us at a competitive disadvantage which is an unintended consequence of the RFS.

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Thank you for your consideration in this manner.

Sincerely,

(b) (6)





HOLLYFRONTIER

P.O. Box 1600
Artesia, NM 88211-1600

LUBBOCK TX 794

16 FEB 2017 PM 4:11

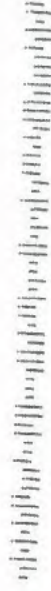
FEB 22 2017



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FCL 20359309



Mon Feb 27 17:15:57 EST 2017
Pruitt.Scott@epamail.epa.gov
Fw: URGENT Letter from Alliance of Automobile Manufacturers to EPA Administrator G. Scott Pruitt
To: CMS.OEX@epamail.epa.gov

From: Susan Conti <sconti@autoalliance.org>
Sent: Tuesday, February 21, 2017 1:02 PM
To: Pruitt, Scott; pruittgscott@epa.gov
Cc: marianne.mcinerney@dot.gov; Grundler, Christopher; Charmley, William; Olechiw, Michael; Kevin.Green@dot.gov; james.tamm@dot.gov; rebecca.yoon@dot.gov; annette.hebert@arb.ca.gov; michael.mccarthy@arb.ca.gov; Chris Nevers; David Schwietert; Gloria Bergquist; John Whatley
Subject: URGENT Letter from Alliance of Automobile Manufacturers to EPA Administrator G. Scott Pruitt

Dear Administrator Pruitt:

The attached letter, on behalf of the Alliance of Automobile Manufacturers, requests that the U.S. Environmental Protection Agency (EPA) withdraw the Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (Final Determination) which was announced on January 13, 2017 but never published in the *Federal Register*.

The Alliance is not asking EPA to make a different Final Determination at this time. All we are asking is that EPA withdraw the Final Determination and resume the Midterm Evaluation, in conjunction with NHTSA, consistent with the timetable embodied in EPA's own regulations. We believe that, if carried out as intended, the Midterm Evaluation can lead to an outcome that makes sense for all affected stakeholders and for society as a whole.

The Alliance welcomes the opportunity for further dialogue. Please contact me at your earliest convenience to discuss this matter further. Thank you.

Mitch Bainwol

President and CEO



February 21, 2017

G. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, D.C. 20460

RE: Final Determination on the Appropriateness of the Model Year 2022-2025
Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm
Evaluation

Dear Administrator Pruitt,

I write on behalf of the Alliance of Automobile Manufacturers (Alliance), an association representing twelve leading manufacturers of cars and light trucks,¹ to request that the U.S. Environmental Protection Agency (EPA) withdraw the Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (Final Determination) which was announced on January 13, 2017 but never published in the *Federal Register*.

For the auto industry, the Final Determination may be the single most important decision that EPA has made in recent history. The Alliance requests that EPA withdraw the Final Determination and resume the Midterm Evaluation, in accordance with its original timetable, to remedy the severe procedural and substantive defects that have infected the process to date. We explain, in more detail below, EPA's authority to withdraw the Final Determination and why that withdrawal is appropriate and essential.

1. EPA Should Exercise Its Authority to Withdraw the Final Determination

As you know, on January 20, the White House issued a memorandum to the heads of all executive departments and agencies instituting a freeze on regulatory activity, pending review by the Office of Management and Budget (OMB) Director.² The Alliance urges EPA to withdraw the Final Determination on its own initiative in accordance with the regulatory freeze. Irrespective of whether EPA considers the Final Determination a rule or an adjudication, the Final Determination should be reviewed

¹ Alliance members are BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Car USA.

² See Memorandum for the Heads of Executive Departments and Agencies, Jan. 20, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies>.

and withdrawn. As the Alliance has noted, a wealth of precedents confirm that the Final Determination is a rule, and all rules not yet published in the *Federal Register* are subject to the regulatory freeze.³ Even if EPA continues to construe the Final Determination as an adjudication, however, it is still subject to the regulatory freeze as an “agency statement of general applicability and future effect ‘that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.’” The Final Determination reaffirms and reinstates industry-wide greenhouse gas emissions standards for all light vehicles sold in America for MY 2022-2025, and thereby establishes a policy on a regulatory issue of central importance to the auto industry.

Furthermore, EPA has ample authority to withdraw the Final Determination on its own initiative, irrespective of whether EPA considers it a rule or an adjudication. If the Final Determination is a rule, it is clearly a nonfinal one, because it has not been published in the *Federal Register*. See 5 U.S.C. § 553(d); *Kennecott Utah Copper Corp. v. U.S. Dep’t of Interior*, 88 F.3d 1191, 1209 (D.C. Cir. 1996). And, as a nonfinal rule, EPA can readily withdraw the Final Determination without engaging in notice-and-comment rulemaking. *Kennecott*, 88 F.3d at 1206.

Even if EPA continues to endorse the view that the Final Determination is an adjudication, however, EPA has broad inherent power to reconsider its decision “within the period available for taking an appeal.” *Am. Methyl Corp. v. EPA*, 749 F.2d 826, 835 (D.C. Cir. 1984). Agencies have long exercised this power to fix determinations like this one that suffer from “serious procedural and substantive deficiencies.” *Belville Min. Co. v. United States*, 999 F.2d 989, 998 (6th Cir. 1993). Regardless of how EPA classifies the Final Determination, EPA should promptly withdraw it in light of the many procedural and substantive flaws described below.

2. EPA Has Abrogated Its Commitment to a Robust Midterm Evaluation

As the Supreme Court has recognized, EPA’s regulatory efforts to address greenhouse gases have already produced “the single largest expansion in the scope of the [Clean Air Act] in its history.”⁴ In 2009, EPA issued an Endangerment Finding that motor vehicle greenhouse gas emissions contribute to climate change and thereby threaten public health and welfare. Thereafter, EPA and the National Highway Traffic Safety Administration (NHTSA) began jointly setting greenhouse gas emissions and fuel economy standards for new light-duty motor vehicles, starting with Model Year (MY) 2012-2016. Then, in 2012, EPA and NHTSA took the unprecedented step of

³ See Alliance Comments on Proposed Determination on Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation at 11-13, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827; Memorandum for the Heads of Executive Departments and Agencies, Jan. 20, 2017.

⁴ *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2436 (2014) (internal quotation marks omitted).

setting joint greenhouse gas and fuel economy standards over a decade in advance for MY 2022-2025 vehicles. 77 Fed. Reg. 62,628 (Oct. 15, 2012). No agency ever had set emissions standards so far into the future, and all stakeholders understood that no one could accurately project the circumstances affecting the technological and economic feasibility of these standards.

The Alliance supported these efforts—but only on the condition that EPA and NHTSA would reassess standards as data became available to test their feasibility. That commitment was essential because of the great uncertainty regarding the feasibility of the future standards. Based on the projections in the 2012 rule, manufacturers must achieve an average 54.5 miles per gallon equivalent across their new vehicle fleets by 2025. Even today, no conventional vehicle today meets that target, and conventional vehicles comprise 96.5% of the new light-duty vehicle fleet. Only some non-conventional vehicles (i.e., hybrid, plug-in electric, and fuel-cell vehicles), which comprise fewer than 3.5% of today’s new vehicles, currently can do so.⁵ Even under EPA’s optimistic estimates, the automotive industry will have to spend a staggering \$200 billion between 2012 and 2025 to comply, making these standards many times more expensive than the Clean Power Plan.⁶

EPA and NHTSA committed to a robust Midterm Evaluation that would take a fresh look at these standards by April 2018. The agencies promised that this review would be collaborative, so that the industry could offer the agencies real-life data to adjust their model-driven forecasts. The agencies also committed to developing greenhouse gas emissions standards and fuel economy standards in tandem.⁷ And they repeatedly represented that they would not complete the Proposed Determination/Notice of Proposed Rulemaking until mid-2017 at the earliest.⁸ The industry took the agencies at their word, commissioning complex studies critical to assessing the MY 2022-2025 standards and the processes used by EPA in its analysis, that we had expected to add to the administrative record for the Midterm Evaluation in 2017.

On November 30, 2016, EPA abruptly abrogated these commitments. EPA issued a Proposed Determination that the MY 2022-2025 standards should go into force

⁵ “Light-Duty Automotive Technology, Carbon Dioxide Emissions, and Fuel Economy Trends: 1975 through 2016,” at 118. U.S. Environmental Protection Agency. EPA-420-R-16-010, Nov. 2016.

⁶ See EPA Regulatory Impact Analysis for 2012-2016 rule (EPA-420-R-10-009, Apr. 2010) at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-model-year-2012-2016-light-duty-vehicle>; EPA Regulatory Impact Analysis for 2017-2025 rule (EPA-420-R-12-016, Aug. 2012) at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-model-year-2017-and-later-light-duty-vehicle>.

⁷ See 40 C.F.R. § 86.1818-12(h), 77 Fed. Reg. 62,784 (Oct. 15, 2012), 40 C.F.R. § 86.1818-12(h)(1)-(2); 81 Fed. Reg. 49,219 (July 27, 2016).

⁸ See Alliance Comments on Proposed Determination at 10, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827.

without modification. EPA issued the Proposed Determination without coordinating with NHTSA. EPA demanded comments by December 30, 2016, even though the Proposed Determination was not published in the *Federal Register* until December 6. The public and industry had a mere 24 days, spanning a major national holiday, to comment on nearly 1,000 pages of documents, plus additional cited documents and computer modeling, regarding requirements that will profoundly affect the automobile industry and the more than 900,000 American workers it directly employs.⁹ After EPA denied requests by various stakeholders to extend the abbreviated comment period, we did our best to file substantive comments. EPA received more than 100,000 public comments, including 63 sets of comments from various organizations spanning hundreds of pages.¹⁰ Many objected that the comment period was inadequate. EPA denied all requests to extend the abbreviated comment period and yet EPA issued the Final Determination on January 13, 2017, just 14 days after the comment period closed. EPA brushed aside objections to its procedural shortcuts and never justified the need for such an abbreviated comment period. EPA also rejected commenters' substantive and technical concerns by resting on its earlier analysis.

3. EPA Should Withdraw the Final Determination Immediately

The Final Determination is the product of egregious procedural and substantive defects and EPA should withdraw it.¹¹ In EPA's rush to promulgate the Final Determination before the new administration took office, EPA bypassed required procedures, failing for instance to provide an adequate period for meaningful notice and comment. The Final Determination asserts that there was no need for more time because the Proposed Determination did not include much new material. But that contention is belied by EPA's acknowledgement that the Proposed Determination adjusted a number of EPA assumptions in response to commenters who pointed out errors at earlier stages. The industry also had an unacceptably short period to try to ascertain why EPA rejected many of its objections.¹² These procedural defects are significant irrespective of whether the Final Determination constitutes rulemaking or adjudication.

EPA's unilateral announcement of its Final Determination also constitutes a failure to harmonize its greenhouse gas emissions standards with NHTSA's fuel-economy standards, contrary to the letter and intent of EPA's own regulations. NHTSA has not yet reached a determination on its fuel economy standards and continues its

⁹ U.S. Department of Labor, Bureau of Labor Statistics, 2015, U.S. Vehicle and Equipment Manufacturing Employment equaled 909,700 people.

¹⁰ Final Determination, Response to Comments at 1-3.

¹¹ See Alliance Comments on Proposed Determination, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827.

¹² See Final Determination, Response to Comments at 7.

Midterm Evaluation rulemaking activities. EPA's failure to act in coordination with NHTSA also casts serious doubt on the legitimacy of EPA's data and conclusions, given the substantial discrepancies between EPA's and NHTSA's analysis of the technologies and costs associated with the MY 2022-2025 standards.¹³

Furthermore, EPA's Final Determination that the MY 2022-2025 greenhouse gas standards should remain unchanged, is riddled with indefensible assumptions, inadequate analysis, and a failure to engage with contrary evidence. Here are just a few examples:

- EPA estimated that these standards will cost the industry at least \$200 billion. But EPA underestimated the burden. Contrary to EPA's assumptions, manufacturers will have to rely on much more expensive electrified technologies (i.e., hybrids and plug-ins), driving up vehicle prices and depressing auto sales.
- EPA refused to conduct an analysis of consumer acceptance and technology affordability needed for compliance, claiming this was too difficult.
- EPA refused to analyze substantively the economic impact of the MY 2022-2025 standards, instead making cursory assertions that downplayed the impact of its mandate on auto sales and employment.
- EPA refused to consider many of the Alliance's technical concerns even when supported by an outside consultant¹⁴, asserted the Alliance provided insufficient data, and then refused further meetings for clarification.

4. Studies and Data Highly Relevant to the Midterm Evaluation Have Not Been Submitted to EPA Because They Still Are Pending

It is particularly critical that EPA withdraw the current Final Determination and reopen the Midterm Evaluation process because analysis commissioned according to EPA's original timetable is ongoing and the Alliance expects that new information relevant to the Final Determination's underlying assumptions and resulting analysis will soon emerge. EPA's rushed timetable, coupled with its about-face on the timing of the Midterm Evaluation, prevented consideration of this information.

¹³ See Alliance Comments on US EPA, US DOT, California's Air Resources Board Draft Technical Assessment Report of Greenhouse Gas Emissions and Fuel Economy Standards for Model Year 2022-2025 Cars and Light Trucks at ES-9, Sept. 26, 2016, Docket ID No. EPA-HQ-OAR-2015-0827, NHTSA's costs are approximately 42% higher than EPA's (NHTSA Table ES-2 v. EPA ES-4 Table ES-1).

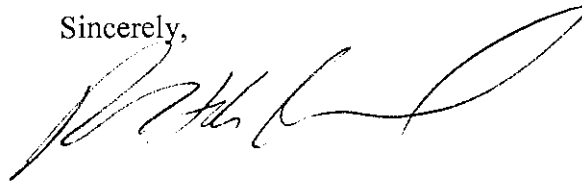
¹⁴ See Novation Analytics Comments on Draft Technical Assessment, Sept. 26, 2016; Docket ID No. EPA-HQ-OAR-2015-0827.

We urge EPA to reconsider imposing such a far-reaching mandate on an entire industry without adequately considering the consequences, and without giving stakeholders a meaningful opportunity to comment. The MY 2022-2025 standards threaten to depress an industry that can ill afford spiraling regulatory costs. If left unchanged, those standards could cause up to *1.1 million* Americans to lose jobs due to lost vehicle sales.¹⁵ And low-income households would be hit the hardest.¹⁶

The Alliance is not asking EPA to make a different Final Determination at this time. All we are asking is that EPA withdraw the Final Determination and resume the Midterm Evaluation, in conjunction with NHTSA, consistent with the timetable embodied in EPA's own regulations. We believe that, if carried out as intended, the Midterm Evaluation can lead to an outcome that makes sense for all affected stakeholders and for society as a whole.

The Alliance welcomes the opportunity for further dialogue about ways to rekindle the industry's longstanding cooperation with EPA on these issues.

Sincerely,



Mitch Bainwol
President and CEO

Cc: Secretary Elaine Chao, DOT
Kevin Green, DOT
Bill Charmley, EPA
Chris Grundler, EPA
Michael Olechiw EPA
Rebecca Yoon, NHTSA
James Tamm, NHTSA
Mike McCarthy, CARB
Annette Hebert, CARB

¹⁵ McAlinden, Sean, et al., *The Potential Effects of the 2017-2025 EPA/NHTSA GHG/Fuel Economy Mandates on the U.S. Economy*, Center for Automotive Research (Sep. 2016) at 49. Referring to the \$3.00 per gallon gasoline price \$6,000 technology cost scenario.

¹⁶ Walton, Tom, et al., *The Impact of Future Fuel Economy Standards on Low Income Households*, Defour Group LLC (Sep. 2016); Walton, Tom, et al., *Defour Group Response to EPA Rejoinders to Defour Group / Alliance of Automobile Manufacturers Submission Regarding the Regressivity/Affordability of EPA's Proposed Fuel Economy Standards*, (Dec. 2016).



AUTO ALLIANCE

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OFFICE OF THE
EXECUTIVE SECRETARY

2017 FEB 21 PM 2:37

February 21, 2017

G. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, D.C. 20460

RE: Final Determination on the Appropriateness of the Model Year 2022-2025
Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm
Evaluation

Dear Administrator Pruitt,

I write on behalf of the Alliance of Automobile Manufacturers (Alliance), an association representing twelve leading manufacturers of cars and light trucks,¹ to request that the U.S. Environmental Protection Agency (EPA) withdraw the Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (Final Determination) which was announced on January 13, 2017 but never published in the *Federal Register*.

For the auto industry, the Final Determination may be the single most important decision that EPA has made in recent history. The Alliance requests that EPA withdraw the Final Determination and resume the Midterm Evaluation, in accordance with its original timetable, to remedy the severe procedural and substantive defects that have infected the process to date. We explain, in more detail below, EPA's authority to withdraw the Final Determination and why that withdrawal is appropriate and essential.

1. EPA Should Exercise Its Authority to Withdraw the Final Determination

As you know, on January 20, the White House issued a memorandum to the heads of all executive departments and agencies instituting a freeze on regulatory activity, pending review by the Office of Management and Budget (OMB) Director.² The Alliance urges EPA to withdraw the Final Determination on its own initiative in accordance with the regulatory freeze. Irrespective of whether EPA considers the Final Determination a rule or an adjudication, the Final Determination should be reviewed

¹ Alliance members are BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Car USA.

² See Memorandum for the Heads of Executive Departments and Agencies, Jan. 20, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies>.

and withdrawn. As the Alliance has noted, a wealth of precedents confirm that the Final Determination is a rule, and all rules not yet published in the *Federal Register* are subject to the regulatory freeze.³ Even if EPA continues to construe the Final Determination as an adjudication, however, it is still subject to the regulatory freeze as an “agency statement of general applicability and future effect ‘that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.’” The Final Determination reaffirms and reinstates industry-wide greenhouse gas emissions standards for all light vehicles sold in America for MY 2022-2025, and thereby establishes a policy on a regulatory issue of central importance to the auto industry.

Furthermore, EPA has ample authority to withdraw the Final Determination on its own initiative, irrespective of whether EPA considers it a rule or an adjudication. If the Final Determination is a rule, it is clearly a nonfinal one, because it has not been published in the *Federal Register*. See 5 U.S.C. § 553(d); *Kennecott Utah Copper Corp. v. U.S. Dep’t of Interior*, 88 F.3d 1191, 1209 (D.C. Cir. 1996). And, as a nonfinal rule, EPA can readily withdraw the Final Determination without engaging in notice-and-comment rulemaking. *Kennecott*, 88 F.3d at 1206.

Even if EPA continues to endorse the view that the Final Determination is an adjudication, however, EPA has broad inherent power to reconsider its decision “within the period available for taking an appeal.” *Am. Methyl Corp. v. EPA*, 749 F.2d 826, 835 (D.C. Cir. 1984). Agencies have long exercised this power to fix determinations like this one that suffer from “serious procedural and substantive deficiencies.” *Belville Min. Co. v. United States*, 999 F.2d 989, 998 (6th Cir. 1993). Regardless of how EPA classifies the Final Determination, EPA should promptly withdraw it in light of the many procedural and substantive flaws described below.

2. EPA Has Abrogated Its Commitment to a Robust Midterm Evaluation

As the Supreme Court has recognized, EPA’s regulatory efforts to address greenhouse gases have already produced “the single largest expansion in the scope of the [Clean Air Act] in its history.”⁴ In 2009, EPA issued an Endangerment Finding that motor vehicle greenhouse gas emissions contribute to climate change and thereby threaten public health and welfare. Thereafter, EPA and the National Highway Traffic Safety Administration (NHTSA) began jointly setting greenhouse gas emissions and fuel economy standards for new light-duty motor vehicles, starting with Model Year (MY) 2012-2016. Then, in 2012, EPA and NHTSA took the unprecedented step of

³ See Alliance Comments on Proposed Determination on Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation at 11-13, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827; Memorandum for the Heads of Executive Departments and Agencies, Jan. 20, 2017.

⁴ *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2436 (2014) (internal quotation marks omitted).

setting joint greenhouse gas and fuel economy standards over a decade in advance for MY 2022-2025 vehicles. 77 Fed. Reg. 62,628 (Oct. 15, 2012). No agency ever had set emissions standards so far into the future, and all stakeholders understood that no one could accurately project the circumstances affecting the technological and economic feasibility of these standards.

The Alliance supported these efforts—but only on the condition that EPA and NHTSA would reassess standards as data became available to test their feasibility. That commitment was essential because of the great uncertainty regarding the feasibility of the future standards. Based on the projections in the 2012 rule, manufacturers must achieve an average 54.5 miles per gallon equivalent across their new vehicle fleets by 2025. Even today, no conventional vehicle today meets that target, and conventional vehicles comprise 96.5% of the new light-duty vehicle fleet. Only some non-conventional vehicles (i.e., hybrid, plug-in electric, and fuel-cell vehicles), which comprise fewer than 3.5% of today's new vehicles, currently can do so.⁵ Even under EPA's optimistic estimates, the automotive industry will have to spend a staggering \$200 billion between 2012 and 2025 to comply, making these standards many times more expensive than the Clean Power Plan.⁶

EPA and NHTSA committed to a robust Midterm Evaluation that would take a fresh look at these standards by April 2018. The agencies promised that this review would be collaborative, so that the industry could offer the agencies real-life data to adjust their model-driven forecasts. The agencies also committed to developing greenhouse gas emissions standards and fuel economy standards in tandem.⁷ And they repeatedly represented that they would not complete the Proposed Determination/Notice of Proposed Rulemaking until mid-2017 at the earliest.⁸ The industry took the agencies at their word, commissioning complex studies critical to assessing the MY 2022-2025 standards and the processes used by EPA in its analysis, that we had expected to add to the administrative record for the Midterm Evaluation in 2017.

On November 30, 2016, EPA abruptly abrogated these commitments. EPA issued a Proposed Determination that the MY 2022-2025 standards should go into force

⁵ "Light-Duty Automotive Technology, Carbon Dioxide Emissions, and Fuel Economy Trends: 1975 through 2016," at 118. U.S. Environmental Protection Agency. EPA-420-R-16-010, Nov. 2016.

⁶ See EPA Regulatory Impact Analysis for 2012-2016 rule (EPA-420-R-10-009, Apr. 2010) at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-model-year-2012-2016-light-duty-vehicle>; EPA Regulatory Impact Analysis for 2017-2025 rule (EPA-420-R-12-016, Aug. 2012) at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-model-year-2017-and-later-light-duty-vehicle>.

⁷ See 40 C.F.R. § 86.1818-12(h), 77 Fed. Reg. 62,784 (Oct. 15, 2012), 40 C.F.R. § 86.1818-12(h)(1)-(2); 81 Fed. Reg. 49,219 (July 27, 2016).

⁸ See Alliance Comments on Proposed Determination at 10, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827.

without modification. EPA issued the Proposed Determination without coordinating with NHTSA. EPA demanded comments by December 30, 2016, even though the Proposed Determination was not published in the *Federal Register* until December 6. The public and industry had a mere 24 days, spanning a major national holiday, to comment on nearly 1,000 pages of documents, plus additional cited documents and computer modeling, regarding requirements that will profoundly affect the automobile industry and the more than 900,000 American workers it directly employs.⁹ After EPA denied requests by various stakeholders to extend the abbreviated comment period, we did our best to file substantive comments. EPA received more than 100,000 public comments, including 63 sets of comments from various organizations spanning hundreds of pages.¹⁰ Many objected that the comment period was inadequate. EPA denied all requests to extend the abbreviated comment period and yet EPA issued the Final Determination on January 13, 2017, just 14 days after the comment period closed. EPA brushed aside objections to its procedural shortcuts and never justified the need for such an abbreviated comment period. EPA also rejected commenters' substantive and technical concerns by resting on its earlier analysis.

3. EPA Should Withdraw the Final Determination Immediately

The Final Determination is the product of egregious procedural and substantive defects and EPA should withdraw it.¹¹ In EPA's rush to promulgate the Final Determination before the new administration took office, EPA bypassed required procedures, failing for instance to provide an adequate period for meaningful notice and comment. The Final Determination asserts that there was no need for more time because the Proposed Determination did not include much new material. But that contention is belied by EPA's acknowledgement that the Proposed Determination adjusted a number of EPA assumptions in response to commenters who pointed out errors at earlier stages. The industry also had an unacceptably short period to try to ascertain why EPA rejected many of its objections.¹² These procedural defects are significant irrespective of whether the Final Determination constitutes rulemaking or adjudication.

EPA's unilateral announcement of its Final Determination also constitutes a failure to harmonize its greenhouse gas emissions standards with NHTSA's fuel-economy standards, contrary to the letter and intent of EPA's own regulations. NHTSA has not yet reached a determination on its fuel economy standards and continues its

⁹ U.S. Department of Labor, Bureau of Labor Statistics, 2015, U.S. Vehicle and Equipment Manufacturing Employment equaled 909,700 people.

¹⁰ Final Determination, Response to Comments at 1-3.

¹¹ See Alliance Comments on Proposed Determination, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827.

¹² See Final Determination, Response to Comments at 7.

Midterm Evaluation rulemaking activities. EPA's failure to act in coordination with NHTSA also casts serious doubt on the legitimacy of EPA's data and conclusions, given the substantial discrepancies between EPA's and NHTSA's analysis of the technologies and costs associated with the MY 2022-2025 standards.¹³

Furthermore, EPA's Final Determination that the MY 2022-2025 greenhouse gas standards should remain unchanged, is riddled with indefensible assumptions, inadequate analysis, and a failure to engage with contrary evidence. Here are just a few examples:

- EPA estimated that these standards will cost the industry at least \$200 billion. But EPA underestimated the burden. Contrary to EPA's assumptions, manufacturers will have to rely on much more expensive electrified technologies (i.e., hybrids and plug-ins), driving up vehicle prices and depressing auto sales.
- EPA refused to conduct an analysis of consumer acceptance and technology affordability needed for compliance, claiming this was too difficult.
- EPA refused to analyze substantively the economic impact of the MY 2022-2025 standards, instead making cursory assertions that downplayed the impact of its mandate on auto sales and employment.
- EPA refused to consider many of the Alliance's technical concerns even when supported by an outside consultant¹⁴, asserted the Alliance provided insufficient data, and then refused further meetings for clarification.

4. Studies and Data Highly Relevant to the Midterm Evaluation Have Not Been Submitted to EPA Because They Still Are Pending

It is particularly critical that EPA withdraw the current Final Determination and reopen the Midterm Evaluation process because analysis commissioned according to EPA's original timetable is ongoing and the Alliance expects that new information relevant to the Final Determination's underlying assumptions and resulting analysis will soon emerge. EPA's rushed timetable, coupled with its about-face on the timing of the Midterm Evaluation, prevented consideration of this information.

¹³ See Alliance Comments on US EPA, US DOT, California's Air Resources Board Draft Technical Assessment Report of Greenhouse Gas Emissions and Fuel Economy Standards for Model Year 2022-2025 Cars and Light Trucks at ES-9, Sept. 26, 2016, Docket ID No. EPA-HQ-OAR-2015-0827, NHTSA's costs are approximately 42% higher than EPA's (NHTSA Table ES-2 v. EPA ES-4 Table ES-1).

¹⁴ See Novation Analytics Comments on Draft Technical Assessment, Sept. 26, 2016; Docket ID No. EPA-HQ-OAR-2015-0827.

We urge EPA to reconsider imposing such a far-reaching mandate on an entire industry without adequately considering the consequences, and without giving stakeholders a meaningful opportunity to comment. The MY 2022-2025 standards threaten to depress an industry that can ill afford spiraling regulatory costs. If left unchanged, those standards could cause up to *1.1 million* Americans to lose jobs due to lost vehicle sales.¹⁵ And low-income households would be hit the hardest.¹⁶

The Alliance is not asking EPA to make a different Final Determination at this time. All we are asking is that EPA withdraw the Final Determination and resume the Midterm Evaluation, in conjunction with NHTSA, consistent with the timetable embodied in EPA's own regulations. We believe that, if carried out as intended, the Midterm Evaluation can lead to an outcome that makes sense for all affected stakeholders and for society as a whole.

The Alliance welcomes the opportunity for further dialogue about ways to rekindle the industry's longstanding cooperation with EPA on these issues.

Sincerely,



Mitch Bainwol
President and CEO

Cc: Secretary Elaine Chao, DOT
Kevin Green, DOT
Bill Charnley, EPA
Chris Grundle, EPA
Michael Olechiw EPA
Rebecca Yoon, NHTSA
James Tamm, NHTSA
Mike McCarthy, CARB
Annette Hebert, CARB

¹⁵ McAlinden, Sean, et al., *The Potential Effects of the 2017-2025 EPA/NHTSA GHG/Fuel Economy Mandates on the U.S. Economy*, Center for Automotive Research (Sep. 2016) at 49. Referring to the \$3.00 per gallon gasoline price \$6,000 technology cost scenario.

¹⁶ Walton, Tom, et al., *The Impact of Future Fuel Economy Standards on Low Income Households*, Defour Group LLC (Sep. 2016); Walton, Tom, et al., *Defour Group Response to EPA Rejoinders to Defour Group / Alliance of Automobile Manufacturers Submission Regarding the Regressivity/Affordability of EPA's Proposed Fuel Economy Standards*, (Dec. 2016).



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OFFICE OF THE
EXECUTIVE SECRETARY

February 17, 2017

Submitted via Hand-Delivery and Email: McCabe.catherine@epa.gov

The Honorable Scott Pruitt
Congressionally Confirmed Administrator
The Honorable Catherine E. McCabe
Acting Administrator U.S. EPA
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Re: Petition for Administrative Reconsideration of the Reclassification of the Sheboygan Wisconsin Area to Moderate Nonattainment for the 2008 Ozone National Ambient Air Quality Standards; Docket No. EPA-HQ-OAR-2016-0277

Dear Administrator McCabe:

Please find attached a Petition for Administrative Reconsideration of the Reclassification of the Sheboygan Wisconsin Area to Moderate Nonattainment for the 2008 Ozone National Ambient Air Quality Standards. Thank you and your staff for your consideration of the enclosed petition.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

Todd Palmer/rem

Todd E. Palmer

TEP/rem

Enclosure

cc: Lucas Vebber, Esq (Wisconsin Manufacturers and Commerce)
Andrew C. Cook, Esq. (Michael Best)
Associate General Counsel for the Air and Radiation Law office
Office of General Counsel (Mail Code 2344A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
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February 17, 2017
Page 2

Ms. Kathleen D'Agostino
Environmental Scientist
Attainment Planning and Maintenance Section
Air Programs Branch (AIR-18)
Environmental Protection Agency Relations
77 West Jackson Blvd.
Chicago, IL 60604

028294-1001\20476315.1

**BEFORE THE ADMINISTRATOR OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

In re:)	
)	EPA Docket No.
RECONSIDERATION OF THE)	EPA-HQ-OAR-2016-0277
RECLASSIFICATION OF THE)	
SHEBOYGAN WISCONSIN AREA TO)	
MODERATE NONATTAINMENT FOR)	
THE 2008 OZONE NATIONAL)	
AMBIENT AIR QUALITY)	
STANDARDS,)	
81 Fed. Reg. 91841)	
(December 19, 2016))	

**PETITION FOR ADMINISTRATIVE RECONSIDERATION
OF THE RECLASSIFICATION OF THE SHEBOYGAN WISCONSIN
AREA TO MODERATE NONATTAINMENT FOR THE 2008 OZONE
NATIONAL AMBIENT AIR QUALITY STANDARDS**

Submitted By:

Wisconsin Manufacturers and Commerce

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Submitted: February 17, 2017

INTRODUCTION

Pursuant to Section 307(d)(7)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7607(d)(7)(B), Wisconsin Manufacturers and Commerce (the “Petitioner” or “WMC”) respectfully requests the Administrator of the U.S. Environmental Protection Agency (“EPA” or “the Administrator”) to reconsider the final rule titled *Reclassification of the Sheboygan Wisconsin Area to Moderate Nonattainment for the 2008 Ozone National Ambient Air Quality Standards*, Docket Number EPA-HQ-OAR-2016-0277 (“Final Rule”) and published at 81 Fed. Reg. 91841, *et seq.* (December 19, 2016) (the “Final Rule”). CAA § 307(d)(7)(B) provides in relevant part:

If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the time provided for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.

The grounds for the objections raised in this petition are based upon actions undertaken by EPA for the first time in the Final Rule or since promulgation of the Final Rule, and therefore could not have been raised during the public comment period. None of the issues raised in the petition are a logical outgrowth of the proposed rule. Further, and as explained below, these issues are of central relevance to the outcome of the Final Rule. These shortcomings, whether considered individually or collectively, amount to a failure to adequately provide notice and solicit public input on key components of the Final Rule, thereby depriving the Petitioner and the general public of their rights in the rulemaking process.

Therefore, the Administrator is required to “convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.” *Id.*; see also *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 125 (D.C. Cir. 2012) (EPA is required to convene a proceeding for reconsideration of a rule if a party raising an objection to the rule meets the requirements in CAA § 307(d)(7)(B)).

Petitioner also requests an administrative stay of the Final Rule pursuant to CAA §§ 307(d)(7)(B) and 301(a) so as to alleviate hardships that are imposed upon the Petitioner’s members which operate in Sheboygan County and which must comply with the improper provisions within the Final Rule. This stay should remain in place beyond the three months prescribed in CAA § 307(d)(7)(B), instead extending until EPA promulgates a revised version of the Final Rule which adequately considers and accounts of the issues raised in this Petition. Furthermore, on February 13, 2017, EPA closed the public comment period on its proposed rule regarding implementation of the 2015 ozone standard. Comments were filed in that rule docket requesting that EPA withdraw the 2008 ozone standard for all counties, including Sheboygan County, upon implementation of the 2015 ozone standard. Petitioner requests a stay to allow EPA to fully and adequately consider those comments and perhaps issue a final rule

implementing the 2015 ozone standard in a manner that renders moot the issues raised in this Petition.

PETITIONER

WMC is a business trade organization with approximately 3,800 members statewide of all sizes and throughout all business sectors. WMC members have a substantial interest in Wisconsin ozone designations as they are subject to the Clean Air Act (CAA) and hold air permits which regulate air emissions from their facilities. WMC's primary interest relates to economic and regulatory ramifications for those areas, including Sheboygan County, being designated as nonattainment.

BACKGROUND OF SHEBOYGAN COUNTY NONATTAINMENT

Sheboygan County, Wisconsin is located on Lake Michigan approximately 55 miles north of Milwaukee and 140 miles north of Chicago.¹ The county is home to just over 115,000 Wisconsinites.² Sheboygan County's largest municipality and seat of government, is the City of Sheboygan, which has a population of just under 50,000.³

The economy of Sheboygan County has been hampered by ozone nonattainment designations since 1979.⁴ These designations have made it difficult to attract new businesses, contributed to employers leaving the area and resulted in investment of capital being diverted elsewhere. These nonattainment designations have also tarnished Sheboygan County with an unfounded reputation of being an unhealthy community⁵ making it more difficult to attract residents, especially millennials and retirees.

Yet these ozone problems are unfortunate artifacts of an arcane and outdated set of federal directives which rely on ozone monitors that lie along the Lake Michigan shoreline. Lake Michigan is known to be an "ozone cooker" where transported pollutants collect and interact in sunlight to form ozone. Wisconsin's riparian monitors pick up this transported ozone as it blows off the Lake and before it dissipates moving inland. As a result, the ozone levels measured at these riparian monitors are relatively high and do not represent air quality within these counties.

For Sheboygan County, the problem lies in EPA's continued reliance on the riparian Kohler Andrae monitor (Site ID: 55-117-0006) to designate Sheboygan County as nonattainment. Although the Kohler Andrae monitor design values for 2014-16 exceed the 2008 ozone national ambient air quality standard (NAAQS), evidence demonstrates that the majority of this ozone is transported from out of state. The entire State of Wisconsin contributes less than 10 percent to

¹ VisitSheboygan.com, "About us." Available at: <http://visitsheboygan.com/about/>.

² U.S. Census Bureau, "QuickFacts: Sheboygan County, Wisconsin." Available at: <http://www.census.gov/quickfacts/table/PST045215/55117,00>.

³ U.S. Census Bureau, "QuickFacts: Sheboygan city, Wisconsin." Available at: <http://www.census.gov/quickfacts/table/PST045215/5572975,00>.

⁴ http://www.ladco.org/reports/ozone/post08/Great_Lakes_Ozone_Study_White_Paper_Draft_v6.pdf, p. 6. Some counties were reclassified as attainment in 2012, yet EPA is expected to return them to nonattainment this October 2017.

⁵ <http://www.tmj4.com/news/air-quality-receives-failing-grades-in-wisconsin>.

the ozone monitored at that location and Sheboygan County sources contribute even less.⁶ Sheboygan County's total annual NO_x emissions account for just two percent of the total NO_x emissions within Wisconsin with the largest source being coal-fired electrical power generation at the Edgewater Generating Station.⁷

Recent analyses prepared by Wisconsin Department of Natural Resources (WDNR) document the role of meteorology and ozone transport in driving ozone concentrations at both the riparian Kohler Andrae and inland Haven monitors.⁸ WDNR focused upon those hours at each monitor where measured ozone concentrations exceeded 70 ppb. WDNR concludes that almost all ozone measured at these monitors comes from the Lake and that most comes from angles that likely indicate a Lake breeze.⁹

Clearly the source of the elevated Kohler Andrae monitor readings is upwind, out-of-state sources, yet EPA policy saddles Sheboygan County with a nonattainment designation. Yet LADCO recently concluded that interstate transport significantly limits Wisconsin's options to reduce the ozone concentrations at this site.¹⁰ Indeed, Sheboygan County continues to bear the burden of an ozone nonattainment designation despite significant reductions of ozone precursor emissions. For example, emissions of nitrogen oxides (NO_x) have declined 47 percent from 2008 to 2014, while emissions of volatile organic compounds (VOC) have declined 39 percent over the same time period based on data from the EPA's National Emissions Inventory (NEI).¹¹ Yet, EPA still relies upon the Kohler Andrae monitor data and considers Sheboygan County as being in nonattainment with the 2008 ozone standard (75 ppb) and is poised to designate Sheboygan County as being in nonattainment with the 2015 ozone standard (70 ppb).

Background of EPA Final Rule Reclassifying the Sheboygan, Wisconsin Area to Moderate Nonattainment for the 2008 Ozone NAAQS

On April 30, 2012, Sheboygan County was designated as nonattainment for the 2008 ozone NAAQS and was classified as marginal, effective July 20, 2012. 77 FR 30088 (May 21, 2012). Wisconsin submitted a letter to EPA requesting a one-year extension of the attainment deadline for Sheboygan County under section 181(a)(5) of the CAA. In that letter, Wisconsin certified that the State had complied with all requirements and commitments pertaining to Sheboygan County in the SIP and that all monitors in the area had a fourth highest daily maximum 8-hour average of 75 ppb or less for 2014 (*i.e.*, the last full year of air quality data prior to the July 20, 2015, attainment date). On May 4, 2016, based on EPA's evaluation and determination that the area met the attainment date extension criteria of CAA section 181(a)(5), EPA granted Sheboygan County a one-year extension of the marginal area attainment date to July 20, 2016. 81 FR 26697.

⁶ http://www.ladco.org/reports/ozone/post08/Great_Lakes_Ozone_Study_White_Paper_Draft_v6.pdf, p. 7; WDNR "2015 Ozone NAAQS Implementation AMSG Stakeholder Workgroup Meeting" February 16, 2017, p. 9. (Attachment A)

⁷ *Id.*, p. 6.

⁸ WDNR "2015 Ozone NAAQS Implementation AMSG Stakeholder Workgroup Meeting" February 16, 2017, p. 6. (Attachment A).

⁹ *Id.*

¹⁰ http://www.ladco.org/reports/ozone/post08/Great_Lakes_Ozone_Study_White_Paper_Draft_v6.pdf, p. 7.

¹¹ <https://www.epa.gov/air-emissions-inventories>

On September 28, 2016, EPA proposed to determine that the Sheboygan area failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016, is not eligible for an additional one-year attainment date extension, and must be reclassified as moderate nonattainment. 81 FR 66617. EPA also proposed to require Wisconsin to submit SIP revisions to address moderate area requirements by January 1, 2017. The public comment period on the proposed rule closed on October 28, 2016.

On December 19, 2016, EPA issued the Final Rule which is the subject of this petition for administrative reconsideration. In the Final Rule EPA determined that the Sheboygan Area has failed to attain the 2008 ozone NAAQS and reclassifying this area as “moderate” nonattainment.

NEW INFORMATION SUPPORTING THIS PETITION

Three years ago Wisconsin installed the Haven monitor (Site ID 551170009) slightly north and inland of the riparian Kohler Andrae site. Haven has monitored “4th highest ozone values” which are 11 ppb lower than the Kohler Andrae monitor¹² and below the federal ozone standards. On or about February 9, 2017, the WDNR submitted the Haven monitor ozone data to EPA for certification purposes.¹³ This data can now be used to establish an updated design value for Sheboygan County based upon the Haven monitor and which supports designating Sheboygan as being in attainment with the 2008 ozone NAAQS. Alternatively, this certified data supports narrowing the geographic scope of the ozone nonattainment area in Sheboygan County.

The Lake Michigan Air Directors Consortium (LADCO) also recently acknowledged in its Lake Michigan Ozone Study 2017 (LMOS 2017) white paper that the ozone concentrations monitored at the Haven site are 10-20 ppb lower than those at the Kohler Andrae lakeshore monitor on average for high-ozone days. LADCO further concluded that “the high-ozone air in this area [of the Kohler Andrae monitor] is largely confined to a very narrow strip of land to the east of the lake breeze front along the lakeshore.”¹⁴ By letter dated January 26, 2017, LADCO confirmed that it was moving forward with its LMOS 17 study and confirmed the key aspects of that work.¹⁵ This information further supports designating the County as attainment for the 2008 ozone standard or narrowing the Sheboygan ozone nonattainment boundary to the “very narrow strip of land” inland of the Lakeshore.

LADCO, in cooperation with the WDNR and other Lake Michigan state regulators, has also developed updated air quality analyses to support the development of attainment SIPs for ozone.¹⁶ These analyses include preparation of regional emissions inventories and meteorological data, evaluation and application of regional chemical transport models, and collection and analysis of ambient monitoring data. LADCO’s Final Report is dated February 3, 2017 and is entitled “Modeling Demonstration for the 2008 Ozone National Ambient Air Quality

¹² WDNR “2015 Ozone NAAQS Implementation AMSG Stakeholder Workgroup Meeting” February 16, 2017, p. 6. (Attachment A).

¹³ <https://www.epa.gov/aqs>.

¹⁴ http://www.ladco.org/reports/ozone/post08/Great_Lakes_Ozone_Study_White_Paper_Draft_v6.pdf, pp. 10-11.

¹⁵ http://www.ladco.org/reports/ozone/post08/update_statement_jan26_as_distributed.pdf.

¹⁶ [http://www.ladco.org/reports/ozone/post08/LADCO%20Ozone%20TSD%20FINAL%20\(Feb%203%202017\).pdf](http://www.ladco.org/reports/ozone/post08/LADCO%20Ozone%20TSD%20FINAL%20(Feb%203%202017).pdf)

Standard for the Lake Michigan Region Technical Support Document” (the TSD Report). Among other things, the TSD Report concludes that the presence of Lake Michigan influences the formation, transport, and duration of elevated ozone concentrations along its shoreline.¹⁷ Areas in closer proximity to the Lake Michigan shoreline, such as the Kohler Andrae monitor, display the most frequent and most elevated ozone concentrations.¹⁸

LADCO also performed additional ozone source apportionment modeling for the Kohler Andrae monitor. The November 2016 modeling results show that roughly 2% of the ozone impacting that monitor came from Wisconsin point sources (EGU and non-EGU sources).¹⁹ Further, 87% of the ozone impacting the monitor came from out of state or biological sources.²⁰

As for emission sources within Sheboygan County, WDNR has prepared nitrogen oxide and volatile organic compound emission density maps for Sheboygan County. These maps are in the nature of emission “heat maps” showing the location and intensity of emissions within the County.²¹ The Sheboygan County maps show that the most significant sources of ozone precursors in the County are located upwind of the Haven monitor (and downwind of the Kohler Andrae monitor). Nonetheless, the Haven monitor is still measuring ozone concentrations below the 2008 ozone NAAQS demonstrating that Sheboygan County emissions sources are not causing or contributing to an exceedance of the ozone NAAQS. Further, these maps suggest that Sheboygan emission sources are not contributing to the ozone concentrations being measured at the Kohler Andrae location.

WDNR has also had an opportunity to analyze the Sheboygan Haven and Kohler Andrae monitor data in the context of performing its duties under the Clean Air Act. On February 16, 2017, the results and conclusions from these analyses were presented to the State’s Air Management Group (AMSG). A summary of this new information is provided in Attachment A in which WDNR concludes that:²²

- Lakeshore ozone concentrations are consistently higher than inland concentrations. These differences are the greatest as the highest lakeshore concentrations (at the Kohler Andrae monitor).
- The highest ozone rarely reaches the inland monitors.
- Concentration gradients are even sharper than predicted by the photochemical model.
- Ozone concentrations at lakeshore monitors are highly correlated with wind speed.
- Overall, ozone concentrations drop off sharply within a few miles of the lakeshore.

This new information, individually or collectively, confirms that the Kohler Andrae monitor should not be used for making the attainment designation decisions for the Lake Michigan Region.

¹⁷ Id., p. 18.

¹⁸ Id., p. 18.

¹⁹ WDNR “2015 Ozone NAAQS Implementation AMSG Stakeholder Work” (Attachment A).

²⁰ Id., p. 9.

²¹ “Nitrogen Oxide and Volatile Organic Compound 2014 Emission Density Maps” (February 16, 2017 AMSG meeting (Attachment B)).

²² WDNR “2015 Ozone NAAQS Implementation AMSG Stakeholder Work” (Attachment A).

rather the Haven monitor is representative of County air quality for that purpose. Alternately, and at a minimum, this new information warrants narrowing the boundaries of a nonattainment area to those areas immediately adjacent to the shoreline.

ISSUES FOR RECONSIDERATION

WMC petitions the Agency for administrative reconsideration of the Sheboygan reclassification. Pursuant to CAA § 307(d)(7)(B), where it was impracticable to raise an objection during the period of public comment or if the grounds for such objection arose after the public comment period (but within the time specified for judicial review), and if such objections are of central relevance to the outcome of the rule, EPA is authorized to reconsider the rule. Each of the issues detailed herein satisfies these criteria for reconsideration.

I. Recent Ozone Data from Sheboygan County Haven Monitor Certified After Publication of the Final Rule Demonstrates that Sheboygan County is Complying with 2008 Ozone NAAQS.

As described above, the State of Wisconsin has located two air quality monitors in Sheboygan County. The first is located at Kohler-Andrae State Park (Site ID 551170006) along Lake Michigan and has been operational since June 1997. It is located within 100 yards of the shoreline and six miles south of the City of Sheboygan. This monitor is upwind from the City and the most significant sources of ozone precursor emissions in the County. The second air quality monitor, known as the Haven monitor (Site ID 551170009), is located approximately six miles northwest of the city and has been operational since April 2014. This monitor is located 3.25 miles from the shoreline and downwind from the City. EPA's moderate nonattainment reclassification is based exclusively on data provided by the Kohler-Andrae monitor.

On or about February 9, 2017, the WDNR submitted the certified Haven monitor ozone data to EPA.²³ Based on this recently certified 2014-2016 data,²⁴ the design value for the Haven monitor would be 0.069 parts per million (ppm), well within attainment for the 2008 ozone standard of 0.075 ppm. A comparison of the recently certified air quality data from the Kohler-Andrae and Haven monitors in Sheboygan County is contained in the table below:

Area	County	Monitor	2013 4 th Highest	2014 4 th Highest	2015 4 th Highest	2016 4 th Highest	2013-15 Average	2014-16 Average
Sheboygan	Sheboygan	Kohler-Andrae	.078	.072	.081	.085	.077	.079
Sheboygan	Sheboygan	Haven	n/a	.068	.067	.074	n/a	.069

...des a much more accurate representation of air quality in Sheboygan

" Available at:

July 26, 2017, LADCO published an open letter²⁵ confirming that it intends to
Lake Michigan Ozone Study (LMOS 2017). In the accompanying
"most persistent ozone pollution problems are in
the paper further notes that WDNR has
term monitors on the

EPA has issued guidance discussing when it is appropriate to narrow the geographic boundaries of a nonattainment area.³⁴ EPA suggests looking at five criteria when making these case by case determinations, each is briefly discussed below in the context of the new information (a more robust discussion of this information is set forth above):

1. Air Quality Data. The certified data for the Haven and Kohler Andrae monitors show a pronounced difference in monitored air quality between inland and shoreline areas.³⁵ The certified 2014-2016 data³⁶ establishes a design value for the Haven monitor of 69 ppb, well within attainment for the 2008 ozone standard. The high-ozone air quality data measured at the riparian Kohler Andrae monitor is confined to a very narrow strip of land to the east along the lakeshore and is not reflective of air quality further inland.³⁷
2. Emission and Emissions Related Data. LADCO source apportionment modeling shows that merely 2% of the ozone impacting the Kohler Andrae monitor came from Wisconsin point sources.³⁸ The Sheboygan County emission density maps show that the most significant sources of ozone precursors in the County are located upwind of the Haven monitor, yet that monitor still shows attainment with the 2008 ozone standard.³⁹
3. Meteorology. The LADCO TSD Report⁴⁰ concludes that depending on large-scale synoptic winds and local-scale lake breezes, different parts of the area experience high ozone concentrations. WDNR also concludes that ozone concentrations as to the Wisconsin lakeshore monitors, including Sheboygan, are highly correlated with southerly winds.⁴¹
4. Geography/Topography. The LADCO TSD Report⁴² concludes that the presence of Lake Michigan influences the formation, transport, and duration of elevated ozone concentrations along its shoreline. Areas in closer proximity to the Lake Michigan shoreline, such as the Kohler Andrae monitor, display the most frequent and most elevated ozone concentrations.⁴³
5. Jurisdictional Boundaries. There are several options for defining the boundaries using jurisdictional criteria.

CONCLUSION

For the foregoing reasons and in consideration of the fundamental and central relevance of the issues raised by this Petition, the EPA should reconsider the Final Rule pursuant to CAA §

³⁴ E.g., memo dated February 25, 2016 entitled "Area Designations for the 2015 Ozone National Ambient Air Quality Standard."

³⁵ <https://www.epa.gov/aqs>.

³⁶ Wisconsin Department of Natural Resources, "Air Quality Reports." Available at: <https://dnr.wisconsin.gov/wisards/webreports/generateAdvancedReports.do>

³⁷ Id., p. 10-11.

³⁸ WDNR "2015 Ozone NAAQS Implementation MSG Stakeholder Workgroup Meeting" February 16, 2017, p. 9. (Attachment A).

³⁹ "Nitrogen Oxide and Volatile Organic Compound 2014 Emission Density Maps" distributed in advance of February 16, 2017 MSG meeting (Attachment B)

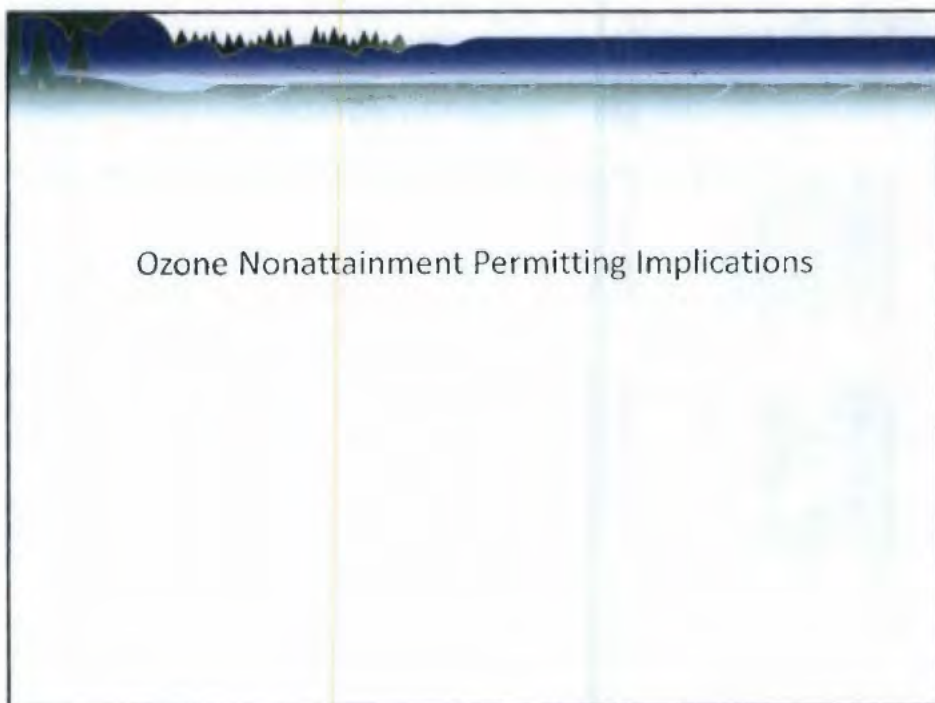
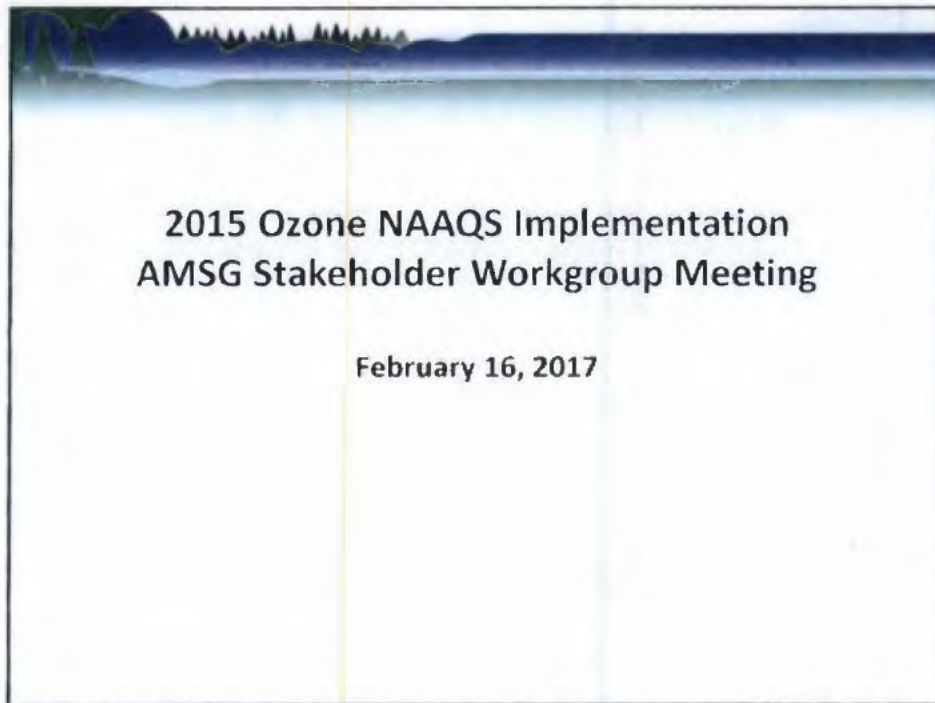
⁴⁰ [http://www.ladco.org/reports/ozone/post08/LADCO%20Ozone%20TSD%20FINAL%20\(Feb%203%202017\).pdf](http://www.ladco.org/reports/ozone/post08/LADCO%20Ozone%20TSD%20FINAL%20(Feb%203%202017).pdf)

⁴¹ WDNR "2015 Ozone NAAQS Implementation MSG Stakeholder Workgroup Meeting" February 16, 2017, p. 6. (Attachment A).

⁴² [http://www.ladco.org/reports/ozone/post08/LADCO%20Ozone%20TSD%20FINAL%20\(Feb%203%202017\).pdf](http://www.ladco.org/reports/ozone/post08/LADCO%20Ozone%20TSD%20FINAL%20(Feb%203%202017).pdf)

⁴³ Id., p. 18.

307(d)(7)(B). This should be done by providing a new notice and comment rulemaking procedure to solicit public input on the issues raised above. In the interim, EPA should also initially stay the effectiveness of the Final Rule for a period of three months as provided for in CAA § 307(d)(7)(B) and then extend the stay, if necessary to allow revisions to the Final Rule.



Nonattainment New Source Review

- Nonattainment New Source Review (NNSR) applies to new major sources or major modifications at existing sources in an area that is not in attainment with the National Ambient Air Quality Standards (NAAQS).
- NNSR requirements depend on the nonattainment area classification.
- All major NNSR permits require (1) the installation of the lowest achievable emission rate (LAER), (2) emission offsets, and (3) opportunity for public involvement.

Major Source Thresholds

OZONE UNCLASSIFIABLE/ATTAINMENT AREA REQUIREMENTS				
Classification	PSD	Major Source Threshold (NOx and VOC, each)	Major Modification Significant Net Increase (NOx and VOC, each)	Offset Ratio
Unclassifiable / Attainment	Yes	100 TPY ¹	40 TPY	none
	Yes	250 TPY	40 TPY	none

OZONE NONATTAINMENT AREA REQUIREMENTS				
Classification	NA New Source Review	Major Source Threshold (NOx and VOC, each)	Major Modification Significant Net Increase (NOx and VOC, each)	Offset Ratio
Marginal ²	Yes	100 TPY	40 TPY	1.1 to 1
Moderate	Yes	100 TPY	40 TPY	1.15 to 1
Serious	Yes	50 TPY	25 TPY	1.2 to 1
Severe	Yes	25 TPY	25 TPY	1.3 to 1
Extreme	Yes	10 TPY	any increase	1.5 to 1

¹For 28 source categories as identified in 40 CFR 52.21(b)(1)(i)(a) and 405.02(z)(a)1.

²Includes Rural Transport Areas

Failure to attain a standard can result in a "bump up" to the next ozone classification.

Overview of CAA Ozone Nonattainment Area Planning & Control Requirements by Classification



		NSR offset ratio	Major source threshold
EXTREME (20 years to attain)	TRAFFIC CONGESTION CONTROLS (if approved by EPA)	1.5 : 1 Extreme	10
	CLEAN FUELS REQUIREMENT FOR BULKIES		
	PENALTY FREE PROGRAMS FOR MAJOR SOURCES		
SEVERE (15/17 years to attain)	LOW VOC REFORMULATED GAS (as appropriate)	1.3 : 1 Severe	25
	VMT GROWTH DEMONSTRATION (if CAN 9 needed)		
	VMT DEMONSTRATION (if CAN 9 needed)		
SERIOUS (9 years to attain)	RPS REQUIREMENTS FOR EXISTING SOURCE MODES	1.2 : 1 Serious	50
	ENHANCED MONITORING PLAN		
	CLEAN FUELS PROGRAM (if applicable)		
	MAJOR RD DEMO OF ATTAINMENT		
	MIKESTONE DEMONSTRATIONS and CONTINGENCY MEASURES FOR RPS		
MODERATE (6 years to attain)	3% ANNUAL RPS UNTIL ATTAINMENT	1.15 : 1 Moderate	100
	ENHANCED VMT for larger population areas		
	CONTINGENCY MEASURES FOR FAILURE TO ATTAIN		
	Range-4 Gasoline-Vapor-Recovery		
	BASIC VEHICLE I/M for larger population areas		
MARGINAL (3 years to attain)	10% VOC ROP or 13% VOC/NOx ROP (OVER 6 YEARS)	1.1 : 1 Marginal	100
	VOC/NOx RACT for MAJOR/CPV SOURCES		
	ATTAINMENT DEMONSTRATION		
	TRANSPORTATION CONDUCTIVITY DEMONSTRATION (if applicable)		
	NONATTAINMENT AREA SOURCE REVIEW PROGRAM		
	MAJOR SOURCE INVENTORY (SQ)		
	PERIODIC EMISSION INVENTORY UPDATES		

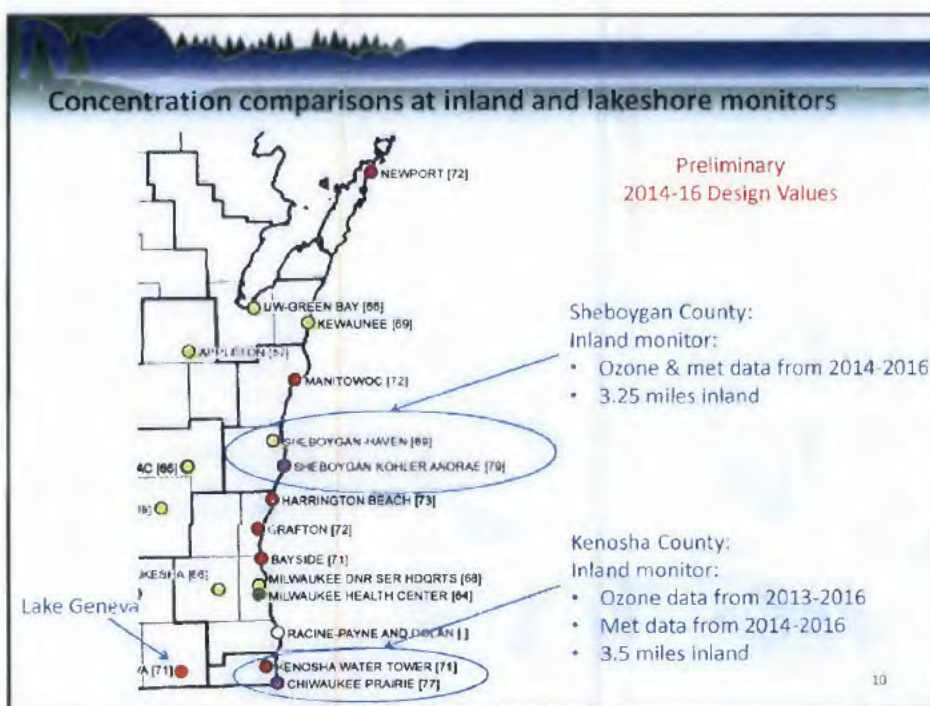
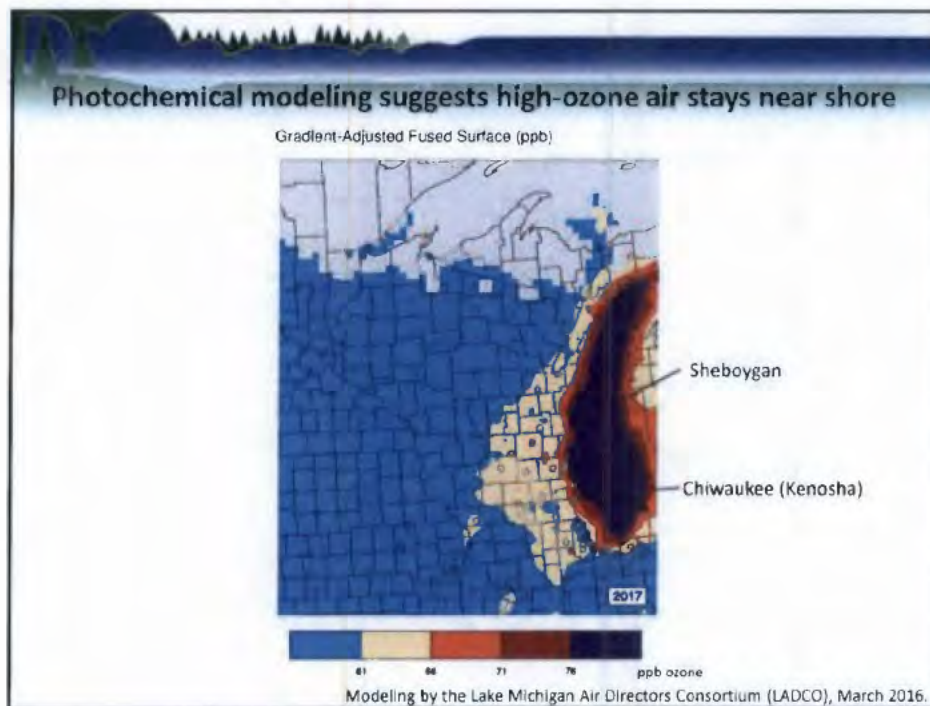
Potential Impact of Cross-State Air Pollution Rule Update (CSAPR 2)

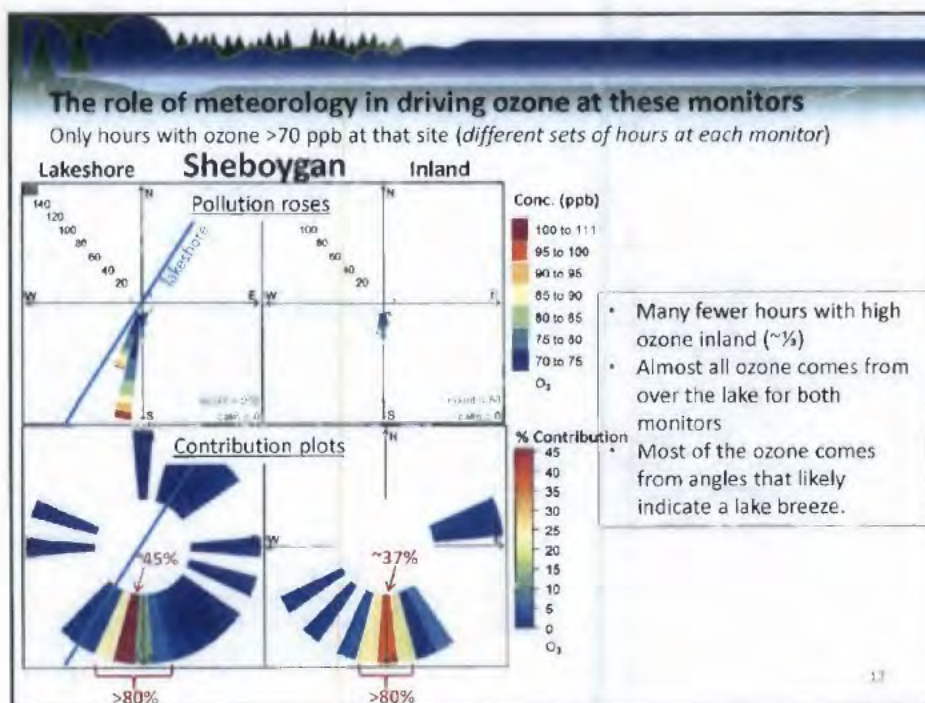
**Projected Ozone Design Values (ppb) for 2017 in the Chicago
and Sheboygan Ozone Nonattainment Areas**

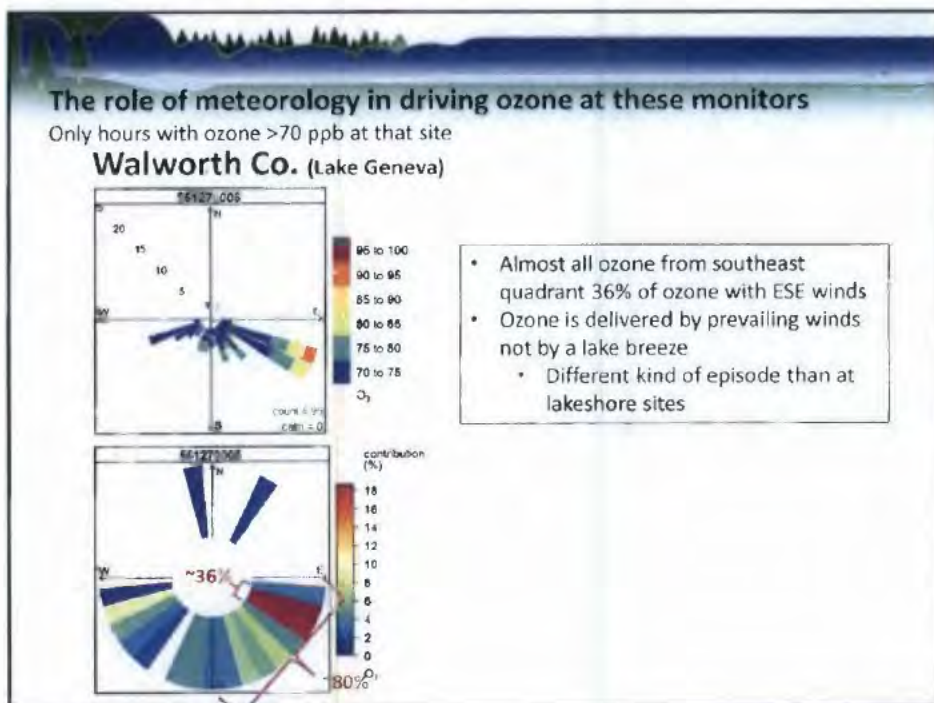
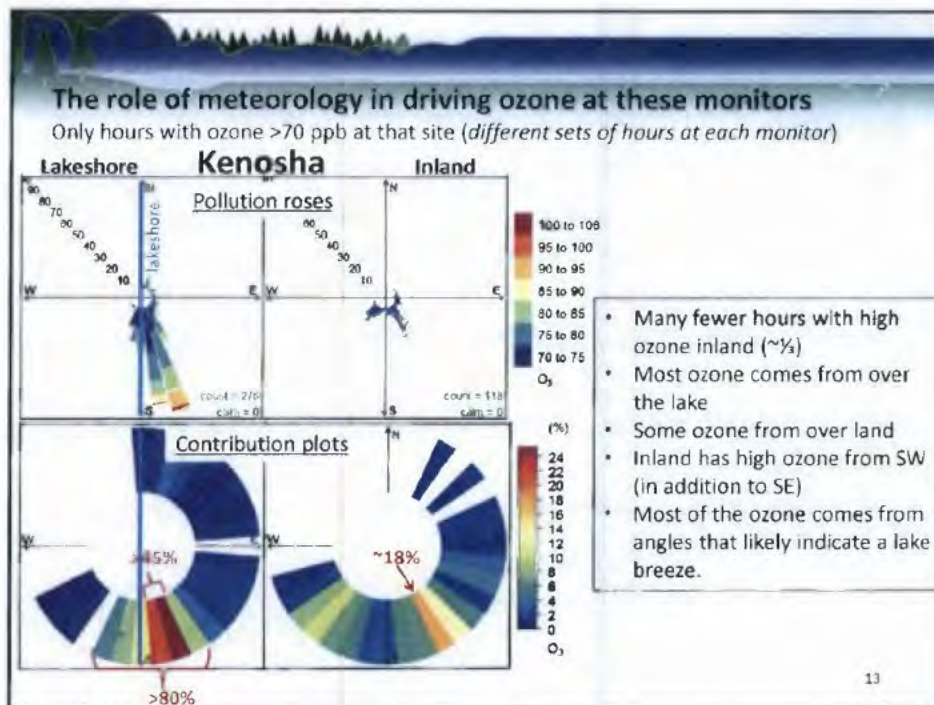
AQS ID	State	County	LADCO 2017 Base	LADCO 2017 w/ CSAPR	EPA 2017
170310001	Illinois	Cook	66.5	66.3	67.5
170310032	Illinois	Cook	64.7	64.5	63.7
170310064	Illinois	Cook	59.4	59.2	58.4
170310076	Illinois	Cook	66.1	65.9	67.0
170311003	Illinois	Cook	55.2	55.1	55.9
170311601	Illinois	Cook	65.8	65.5	66.4
170314002	Illinois	Cook	59.0	58.8	57.9
170314007	Illinois	Cook	54.0	53.9	54.1
170314201	Illinois	Cook	62.2	62.1	62.3
170317002	Illinois	Cook	60.4	60.3	61.2
170436001	Illinois	DuPage	61.3	61.0	61.8
170890005	Illinois	Kane	66.0	65.8	66.5
170971007	Illinois	Lake	64.9	64.8	65.0
171110001	Illinois	McHenry	64.7	64.4	65.2
171971011	Illinois	Will	58.2	58.0	58.9
180890022	Indiana	Lake	59.2	59.0	60.2
180890030	Indiana	Lake	61.2	61.0	61.3
180892008	Indiana	Lake	59.7	59.6	59.8
181270024	Indiana	Porter	62.2	62.0	62.5
181270026	Indiana	Porter	58.0	57.9	58.4
550590019	Wisconsin	Kenosha	66.5	66.4	66.7
551170006	Wisconsin	Sheboygan	76.4	76.1	77.0


LADCO, Feb. 2017

**Inland Penetration of High-Ozone Air along Wisconsin's
Lake Michigan Shoreline**










Conclusions

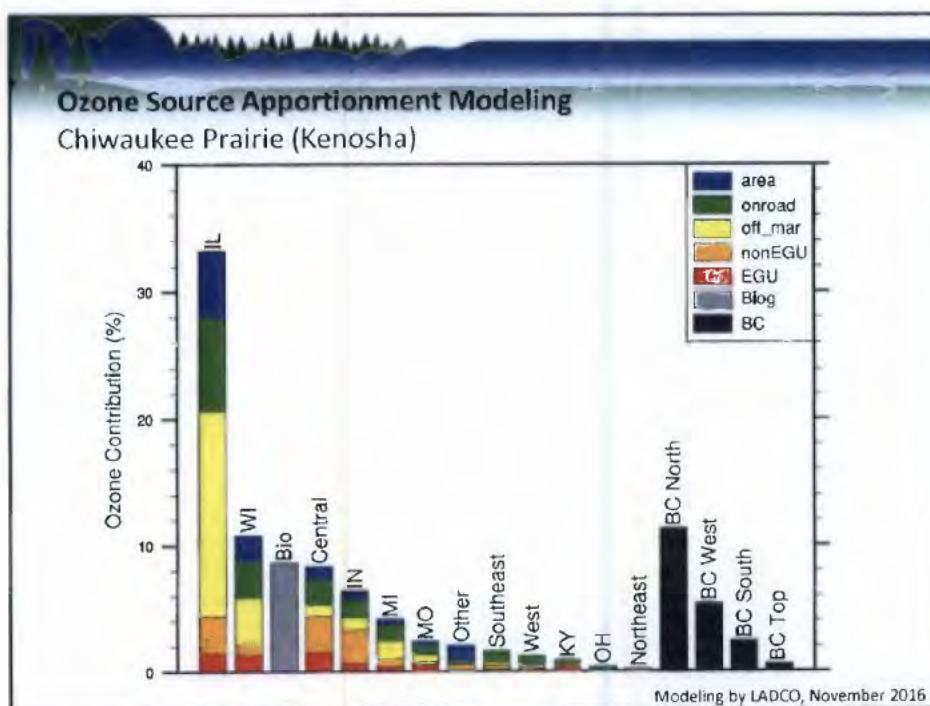
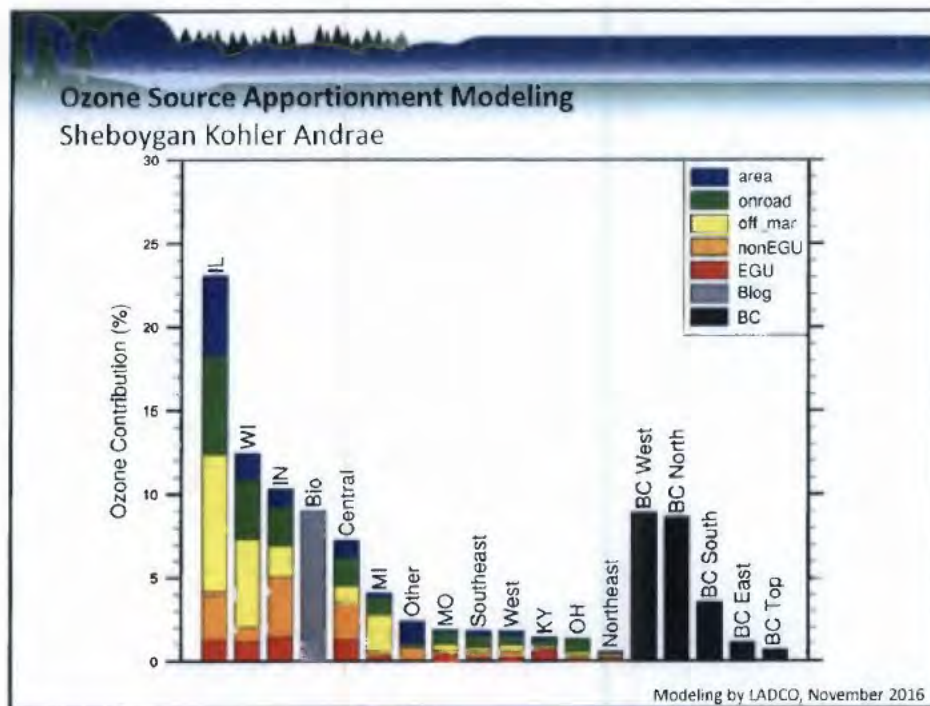
- Lakeshore ozone concentrations are consistently higher than inland concentrations.
 - These differences are the greatest at the highest lakeshore concentrations.
 - The highest ozone air rarely reaches the inland monitors.
- Concentration gradients are even sharper than predicted by the photochemical models
- Ozone concentrations at lakeshore monitors are highly correlated with southerly winds.

Overall: Ozone concentrations drop off sharply within a few miles of the lakeshore.

15



Source Apportionment Modeling



Nitrogen Oxides and Volatile Organic Compound 2014 Emissions Density Maps

INTRODUCTION

The following Nitrogen Oxides (NO_x) and Volatile Organic Compounds (VOC) emissions density maps are generated for Door, Manitowoc, and Sheboygan counties; the Milwaukee CSA (Washington, Ozaukee, Waukesha, Milwaukee and Racine counties); and the Walworth, Racine, and Kenosha county area (mix of CSA's). The NO_x and VOC emissions densities maps are based on data reported to the 2014 National Emissions Inventory (NEI).

Emissions and emissions-related data are one of the five factors that EPA will use to determine nonattainment boundaries.

DEFINITIONS

Minor Civil Division (MCD) – a term used by the U.S. Census Bureau to describe sub-county levels of government such as cities, towns, villages, townships, precincts, etc.

Combined Statistical Area (CSA) – a term used by the U.S. Census Bureau to describe areas composed of adjacent metropolitan and micropolitan statistical areas that can demonstrate economic or social linkages, such as commuting patterns.

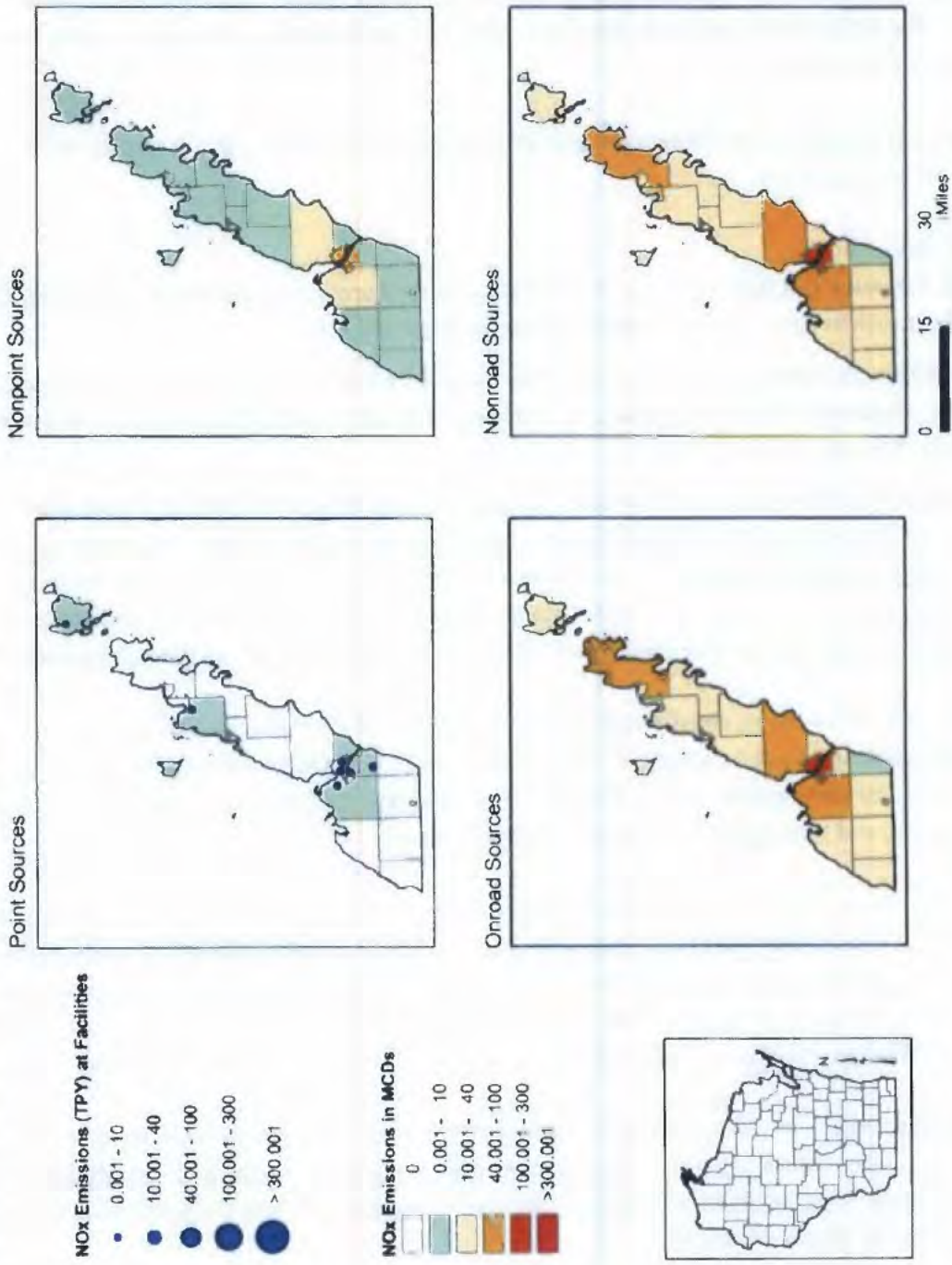
Point sources – includes emissions estimates for larger sources that are located at a fixed, stationary location such as large industrial facilities, electric power plants, airports, and smaller industrial, non-industrial and commercial facilities. A small number of portable sources such as some asphalt or rock crushing operations are also included. Some states voluntarily also provide facilities such as dry cleaners, gas stations, and livestock facilities, which are otherwise included in the NEI as nonpoint sources.

Nonpoint sources – includes emissions estimates for sources which individually are too small in magnitude to report as point sources. These emissions sources are included in the NEI as a county total or tribal total (for participating tribes). Examples include residential heating, commercial combustion, asphalt paving, and commercial and consumer solvent use, etc.

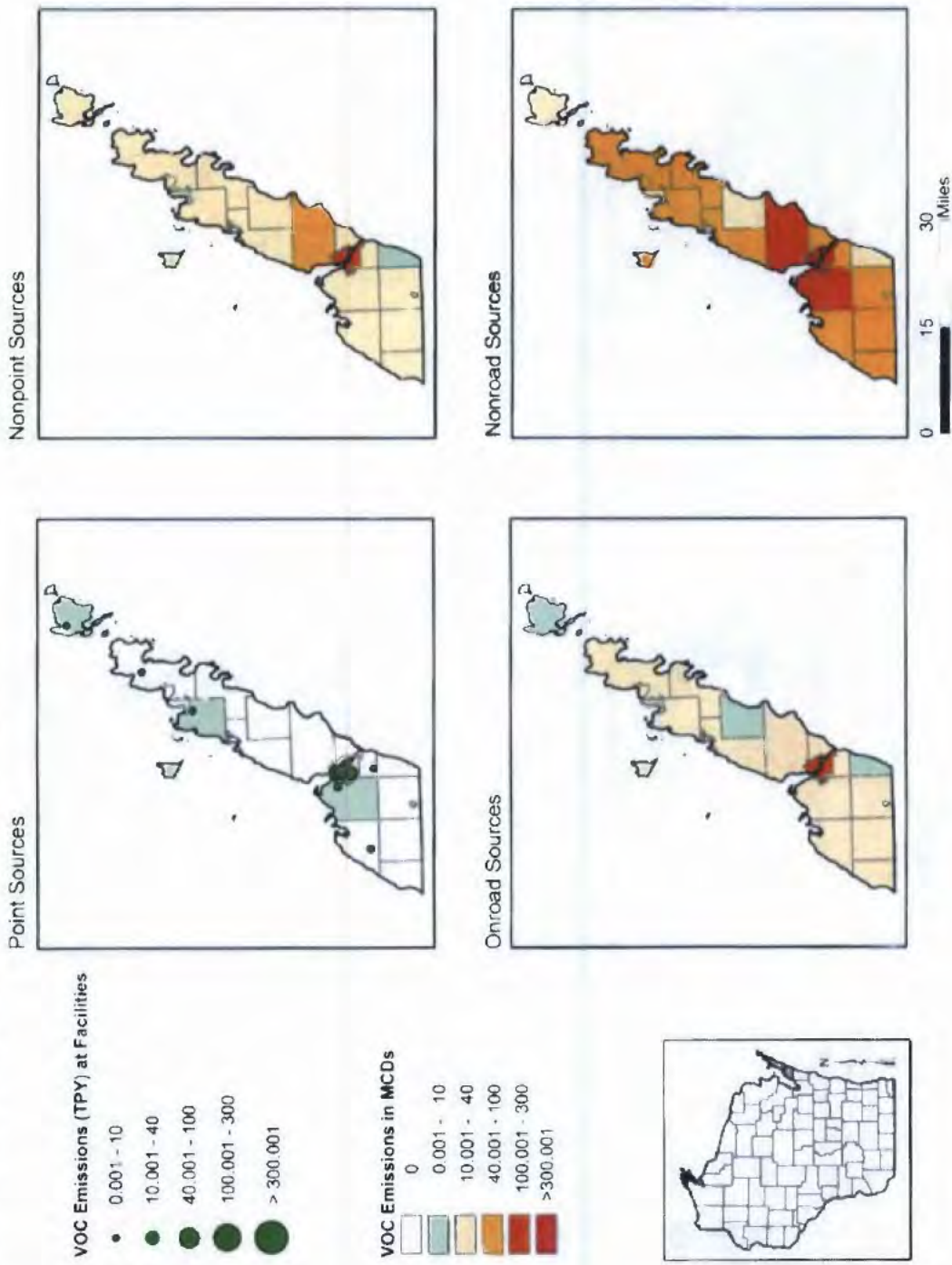
Onroad sources – includes emissions from onroad vehicles that use gasoline, diesel, and other fuels. These sources include light duty and heavy duty vehicle emissions from operation on roads, highway ramps, and during idling. Except for California, the US EPA uses the MOVES2014 model to compute onroad source emissions based on model inputs provided by State, Local, and Tribal air agencies. California provides emissions to the US EPA based on a California-specific model.

NEI nonroad sources – includes off-road mobile sources that use gasoline, diesel, and other fuels. Source types include construction equipment, lawn and garden equipment, aircraft ground support equipment, locomotives, and commercial marine vessels. EPA uses the MOVES2014 model to compute nonroad source emissions.

Door: Sub-county level NOx Emissions-2014



Door: Sub-county level VOC Emissions-2014



Manitowoc: Sub-county level NOx Emissions-2014



Point Sources



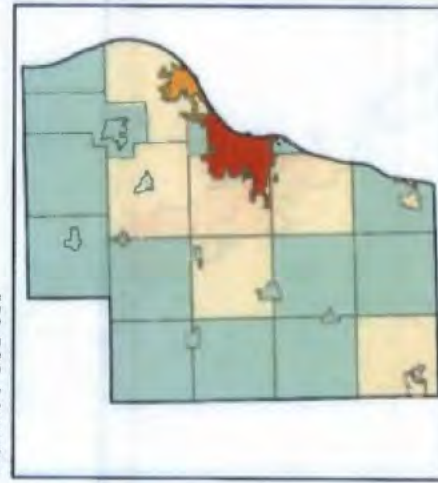
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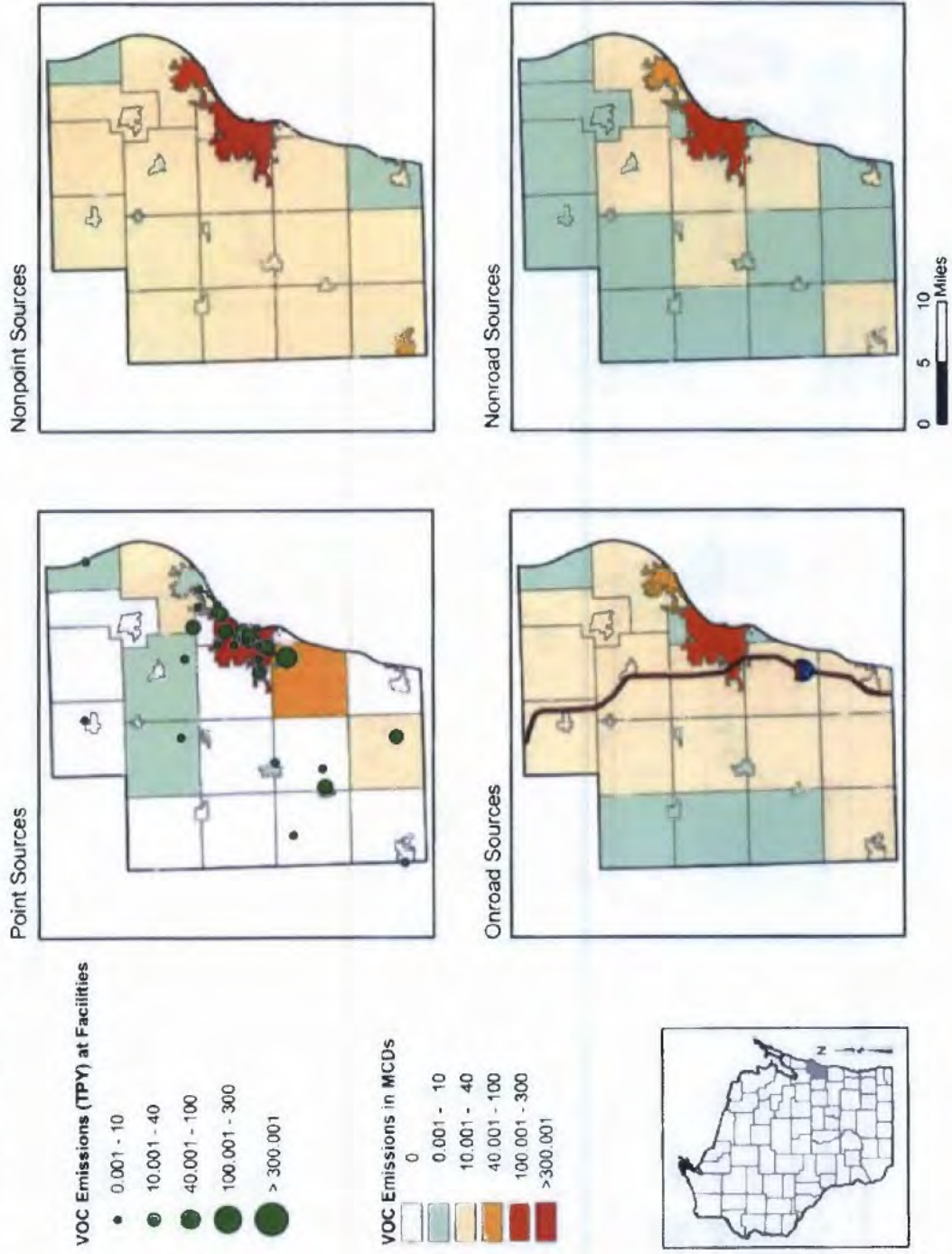
Onroad Sources



Nonroad Sources



Manitowoc: Sub-county level VOC Emissions-2014



Sheboygan: Sub-county level NOx Emissions-2014

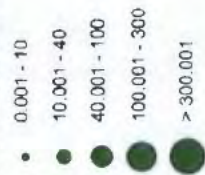


Sheboygan: Sub-county level VOC Emissions-2014

Point Sources



VOC Emissions (TPY) at Facilities



VOC Emissions in MCDs



Nonpoint Sources



Nonroad Sources

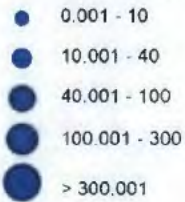


Onroad Sources

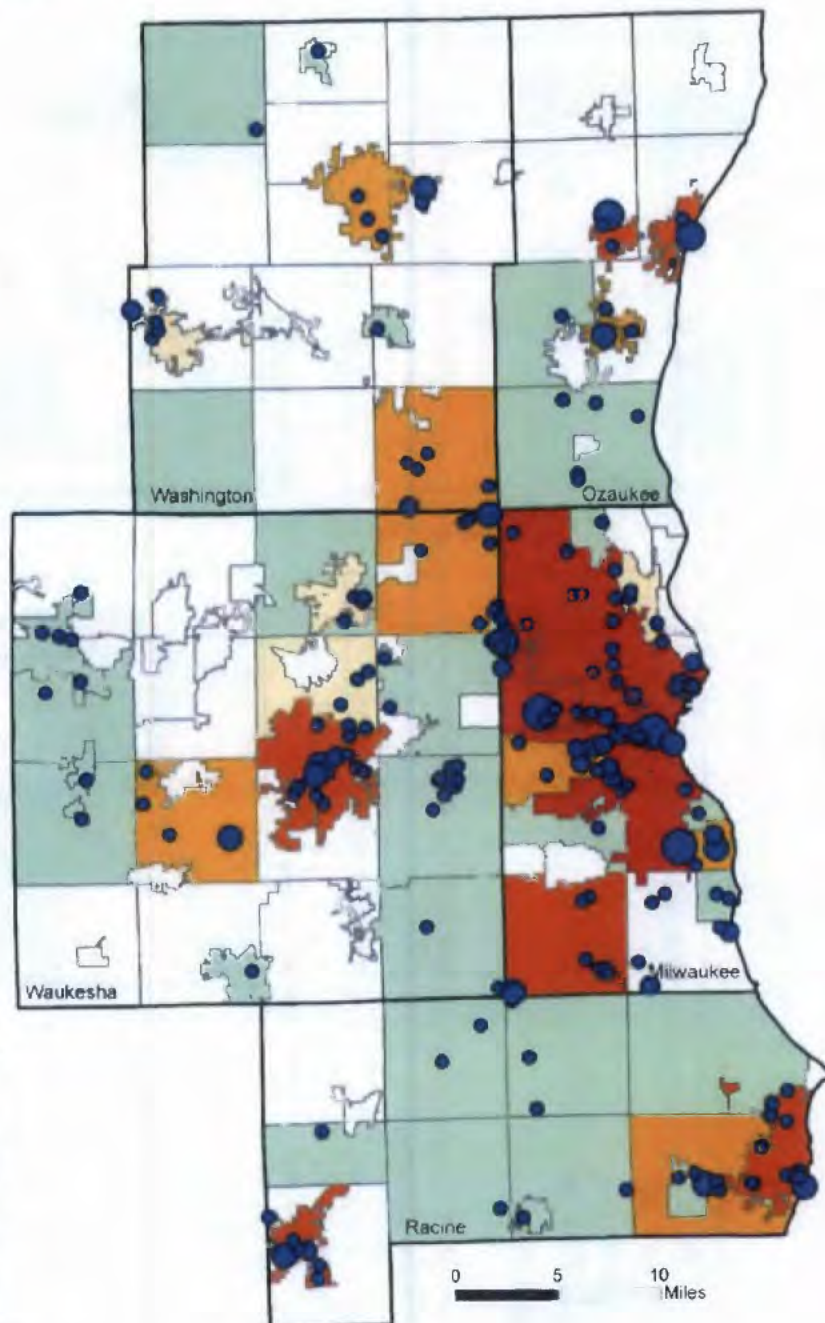
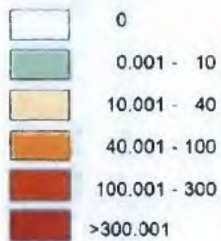


Milwaukee_CSA : Sub-county level NOx Emissions-2014 Point Sources

NOx Emissions (TPY) at Facilities

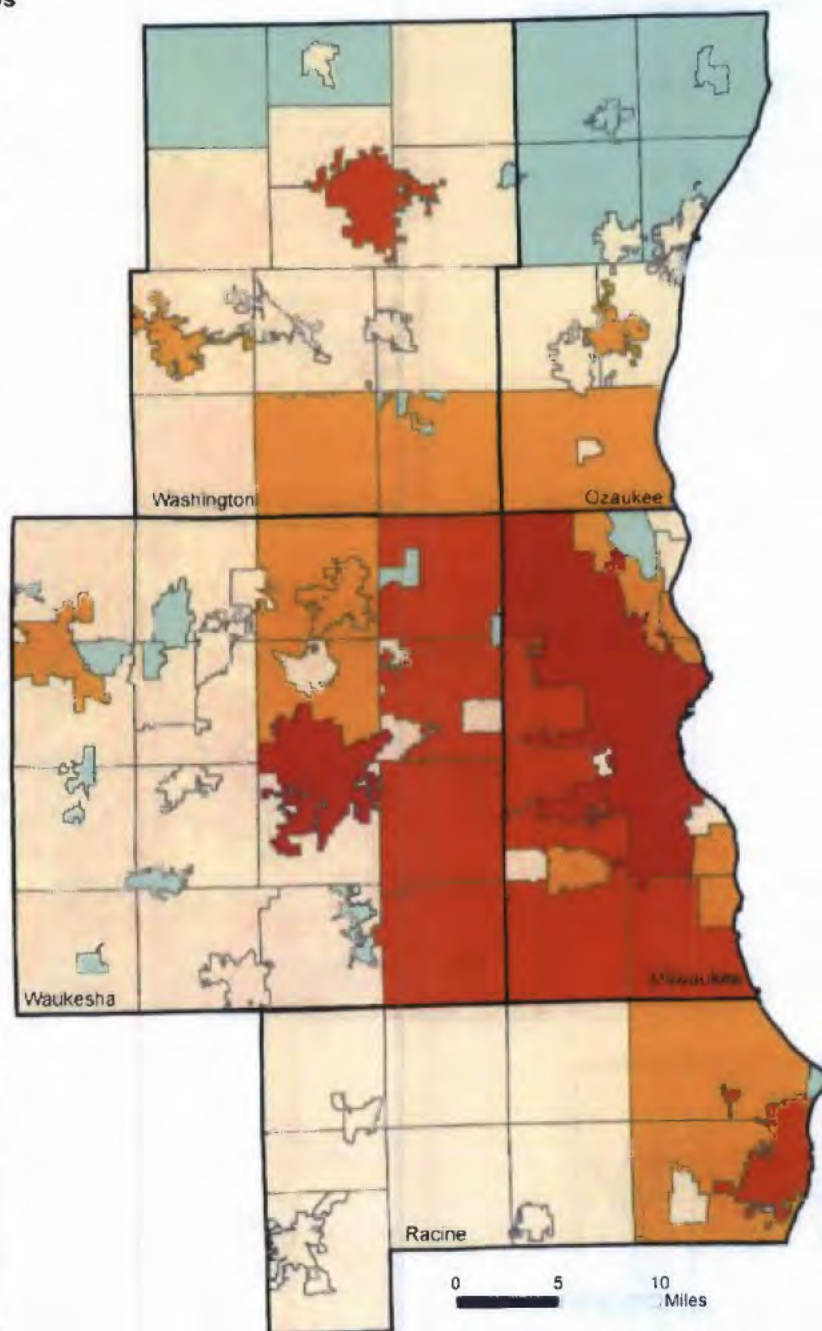
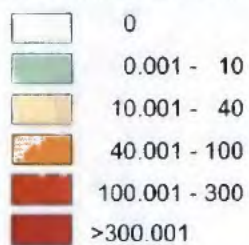


NOx Emissions in MCDs



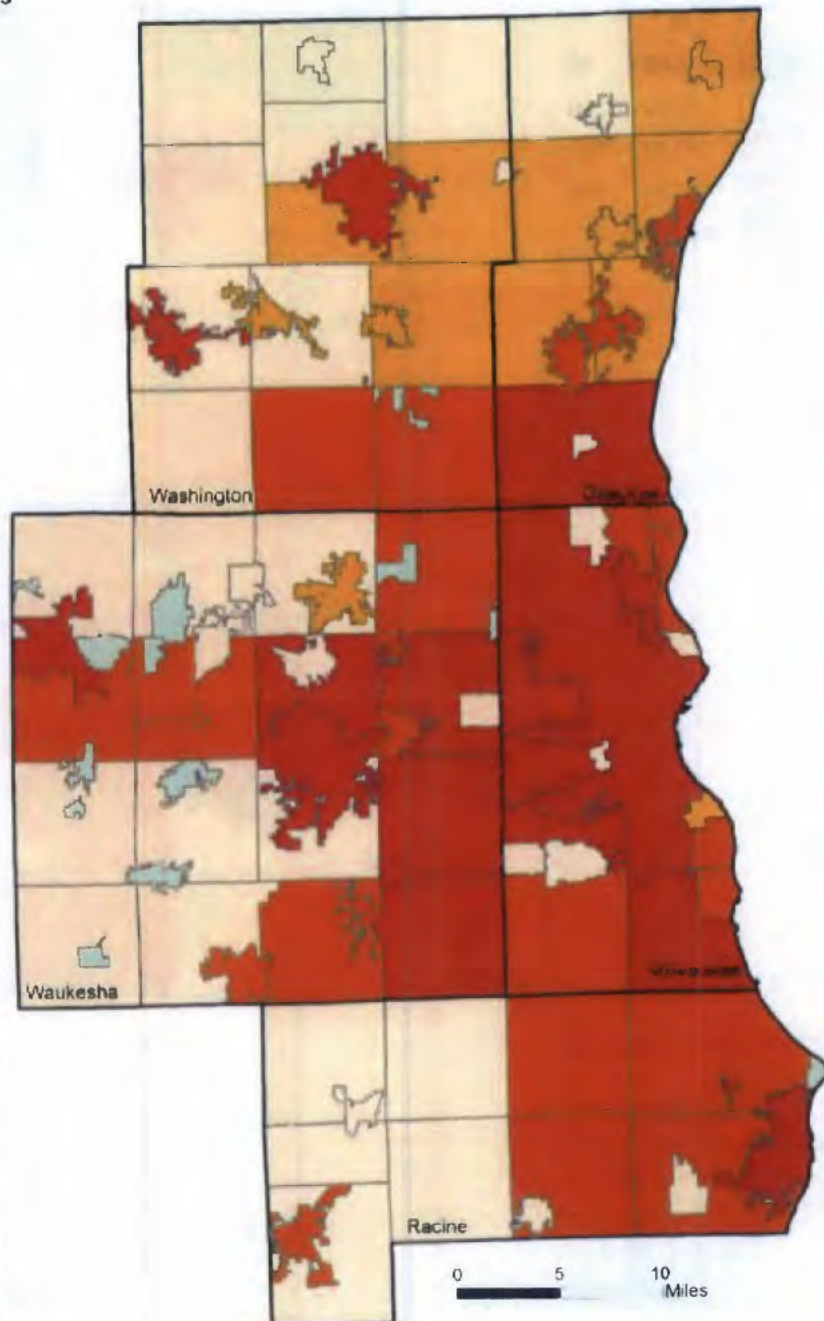
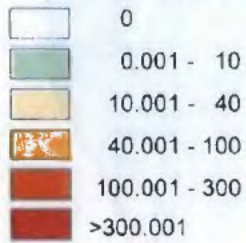
Milwaukee_CSA : Sub-county level NOx Emissions-2014 Nonpoint Sources

NOx Emissions in MCDs



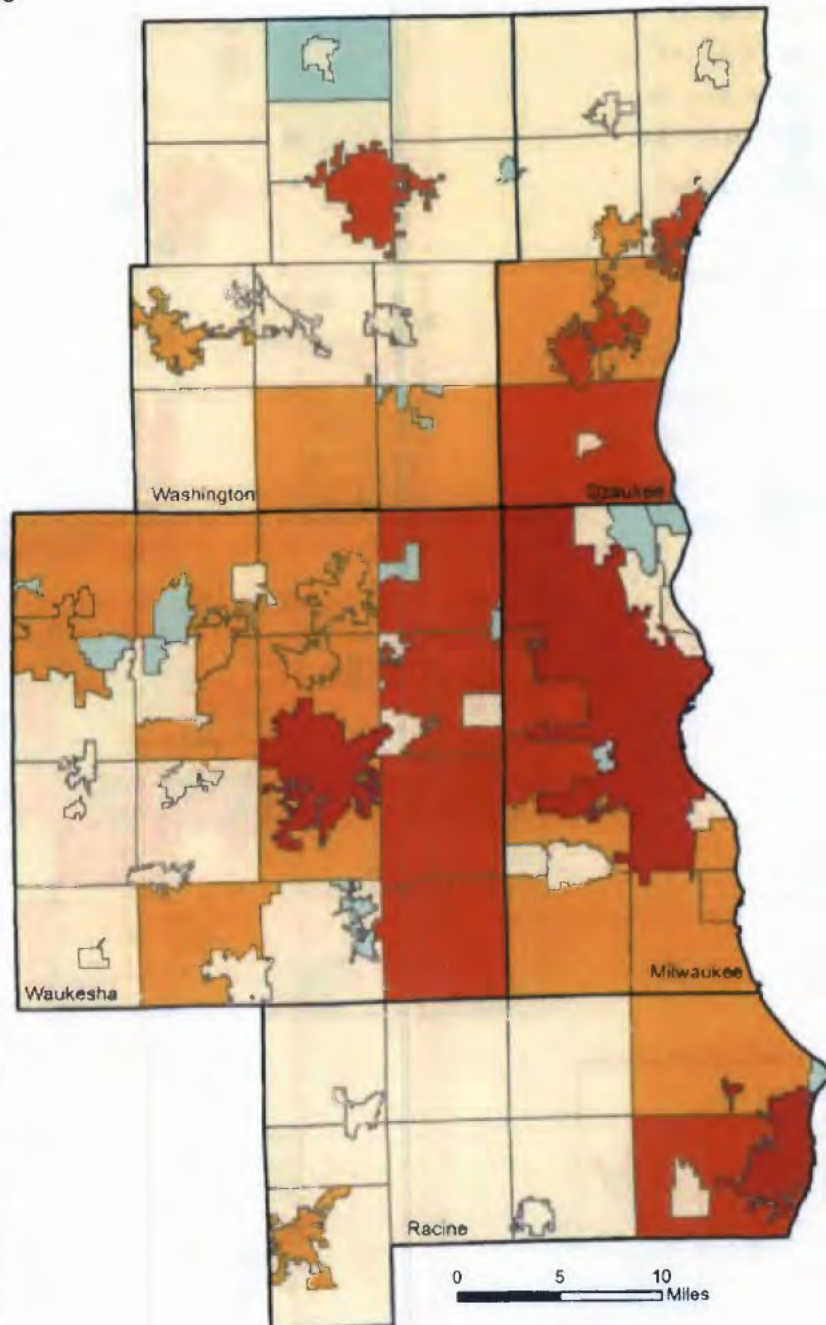
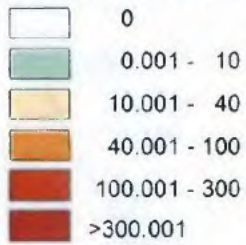
Milwaukee_CSA : Sub-county level NOx Emissions-2014 Onroad Sources

NOx Emissions in MCDs



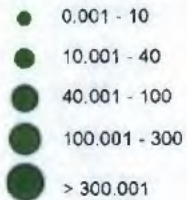
Milwaukee_CSA : Sub-county level NOx Emissions-2014 Nonroad Sources

NOx Emissions in MCDs

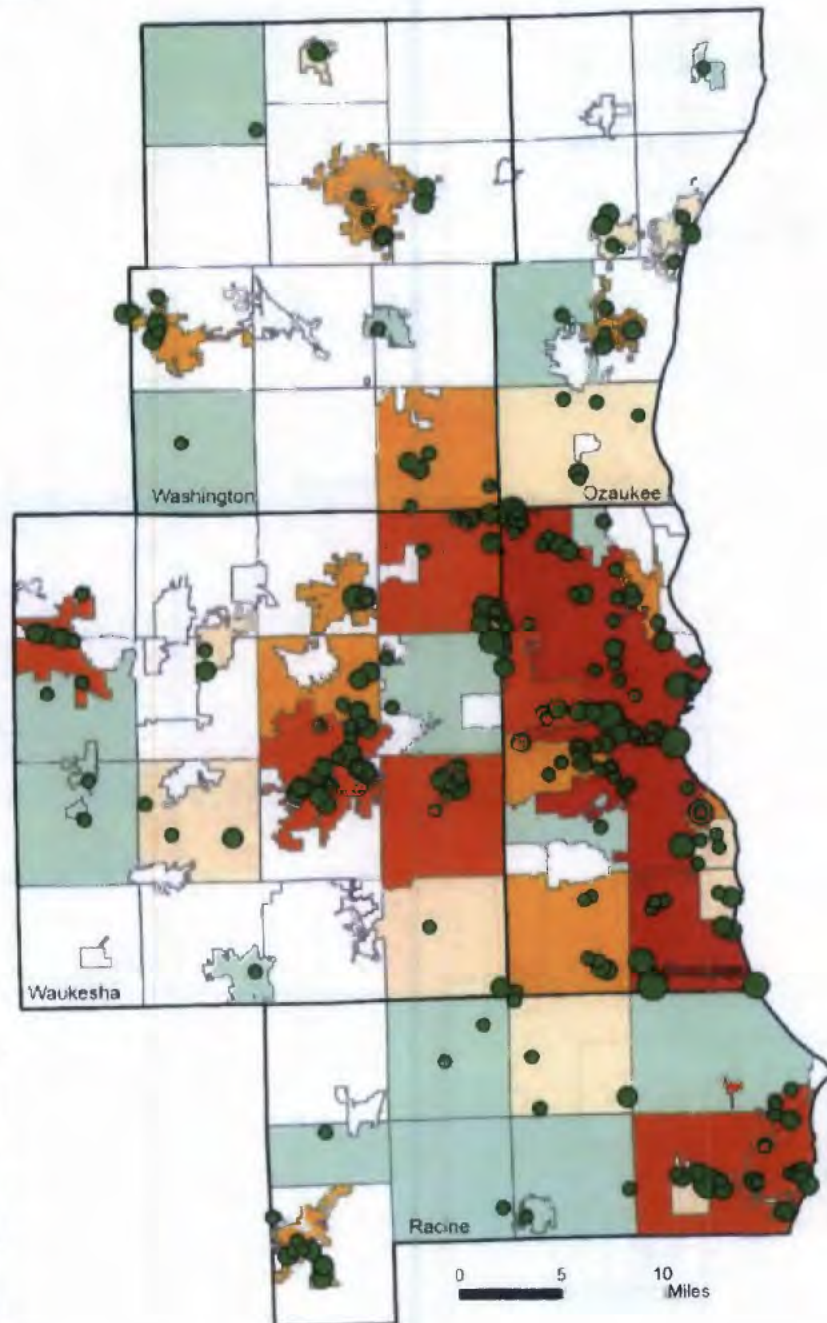
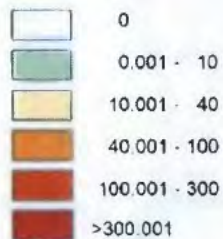


Milwaukee_CSA : Sub-county level VOC Emissions-2014 Point Sources

VOC Emissions (TPY) at Facilities

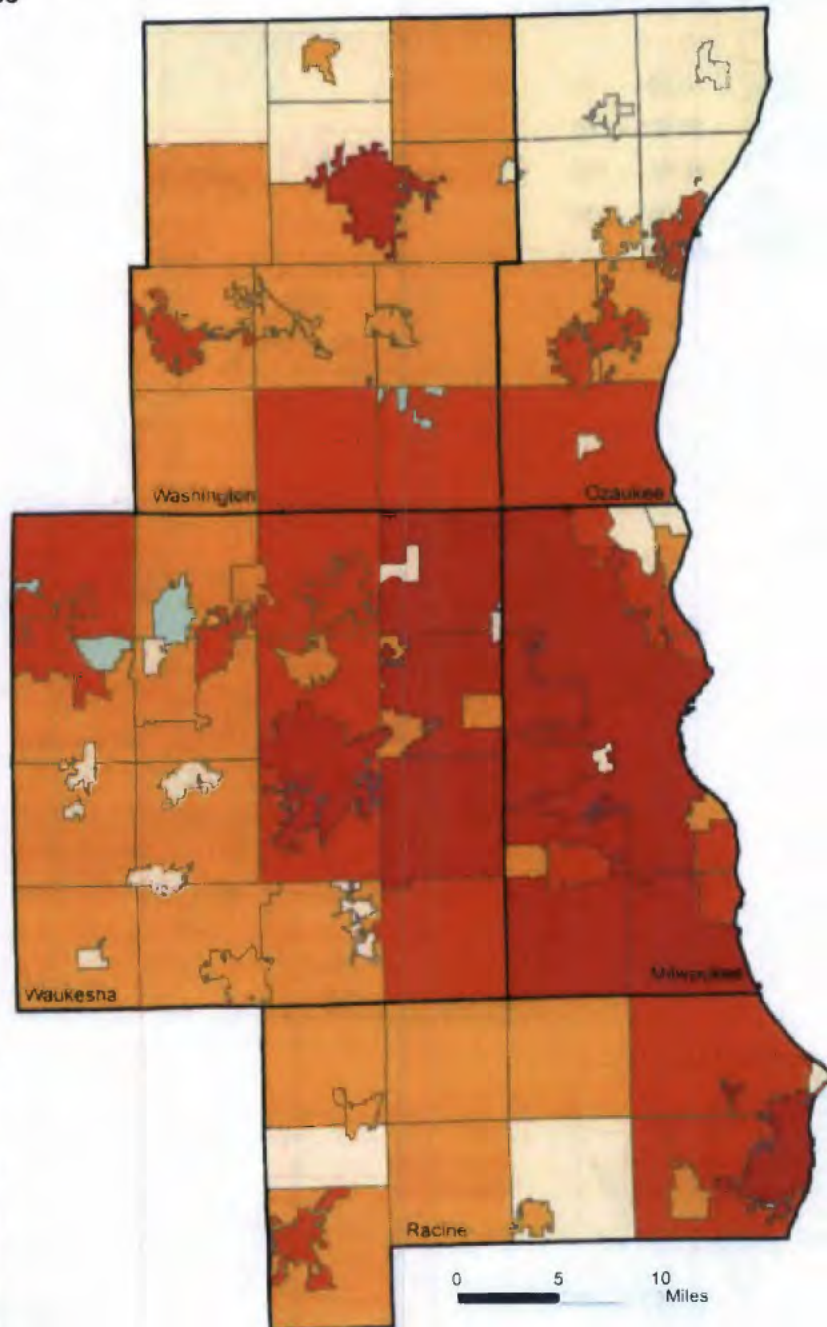
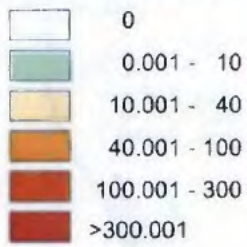


VOC Emissions in MCDs



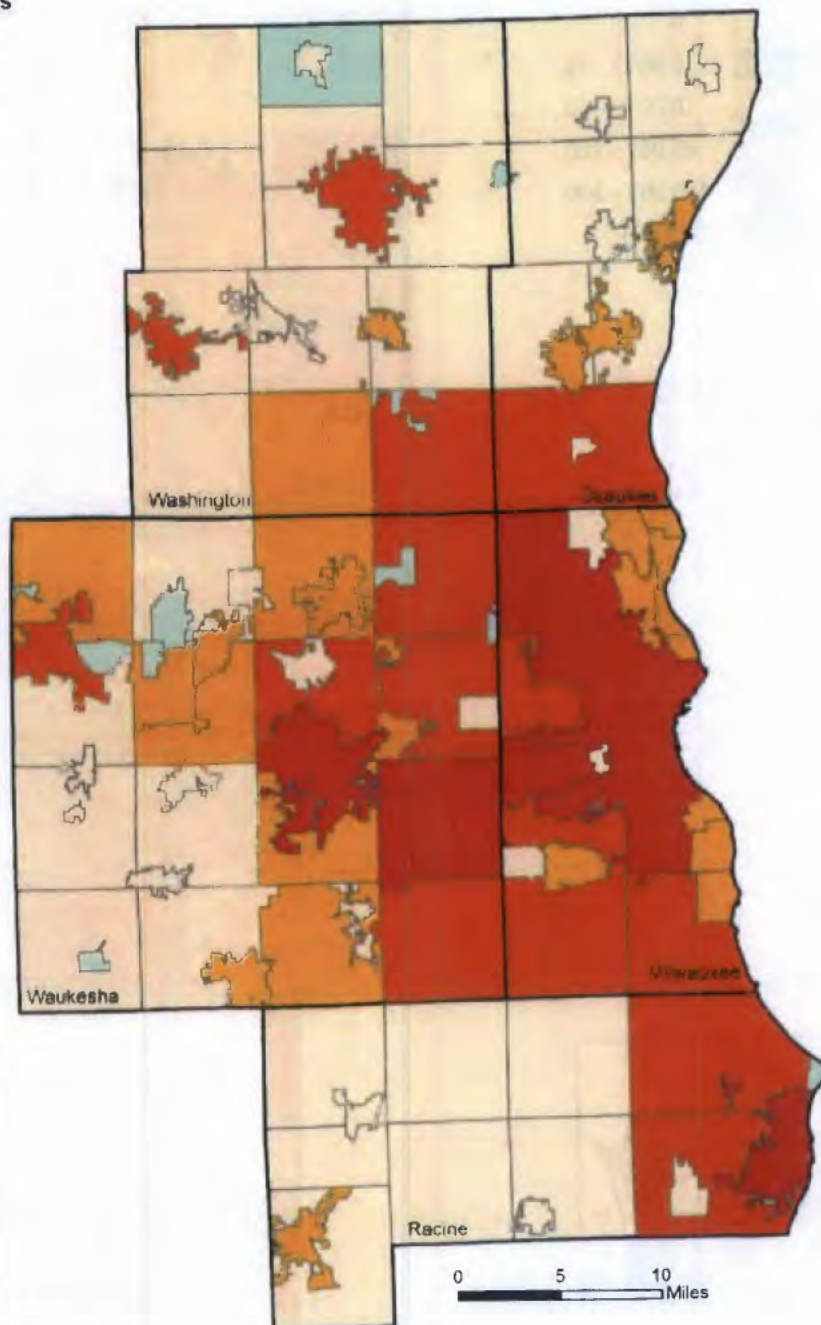
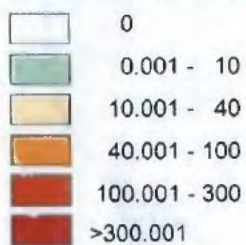
Milwaukee_CSA : Sub-county level VOC Emissions-2014 Nonpoint Sources

VOC Emissions in MCDs



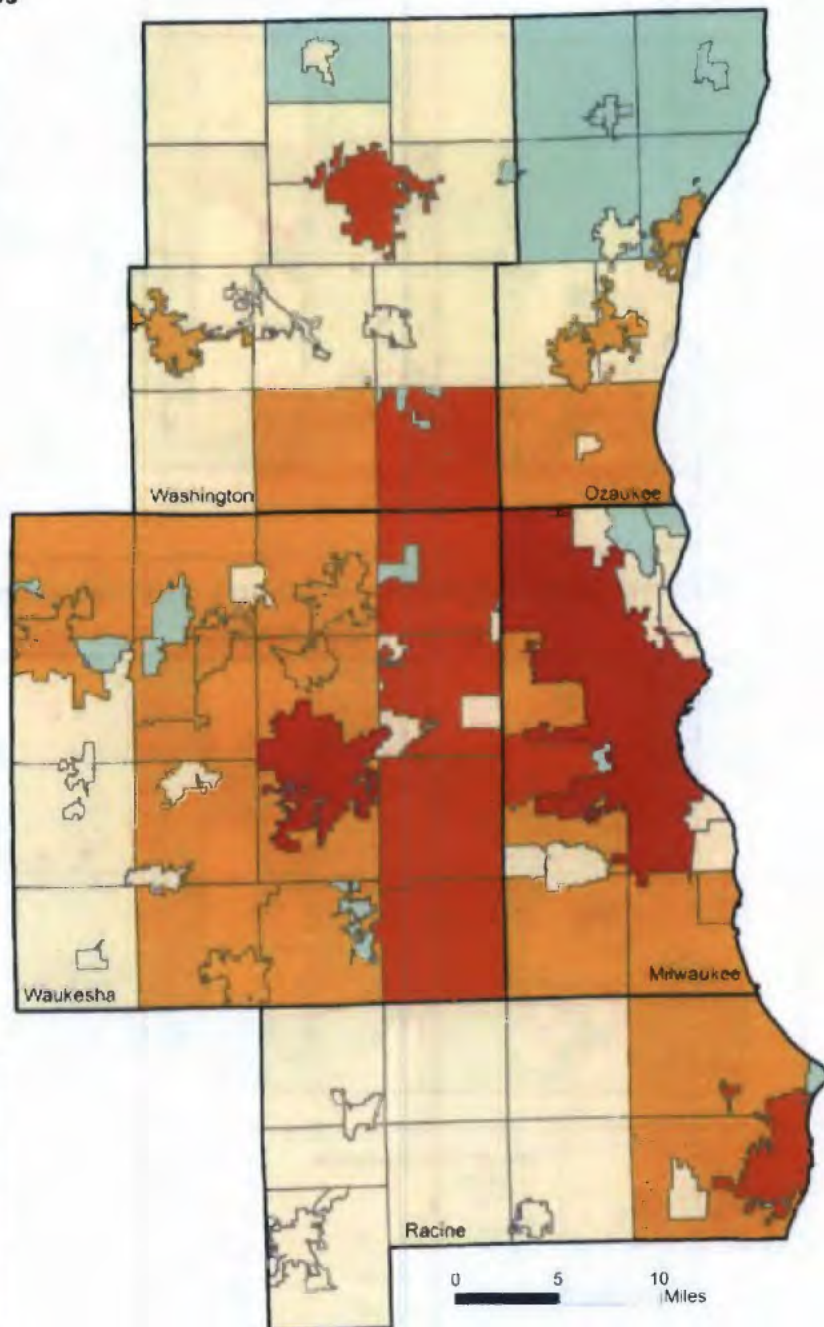
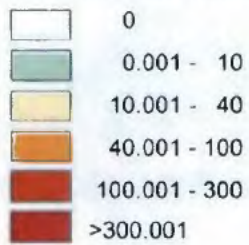
Milwaukee_CSA : Sub-county level VOC Emissions-2014 Onroad Sources

VOC Emissions in MCDs

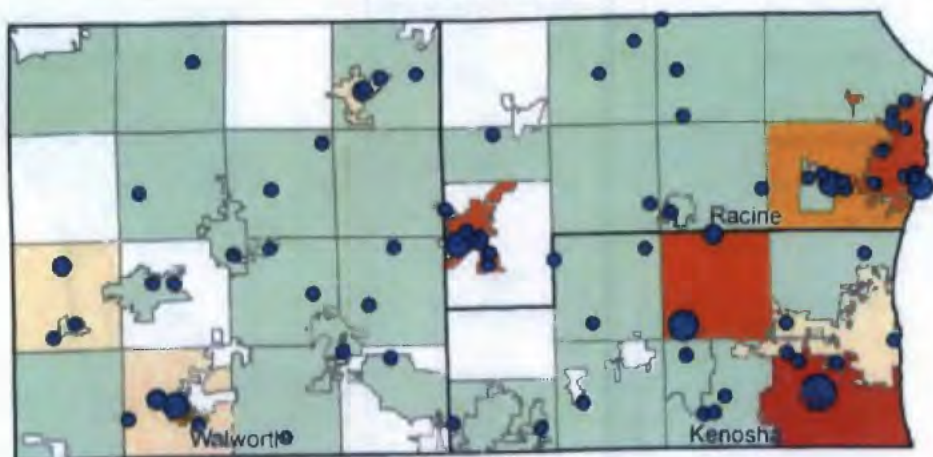


Milwaukee_CSA : Sub-county level VOC Emissions-2014 Nonroad Sources

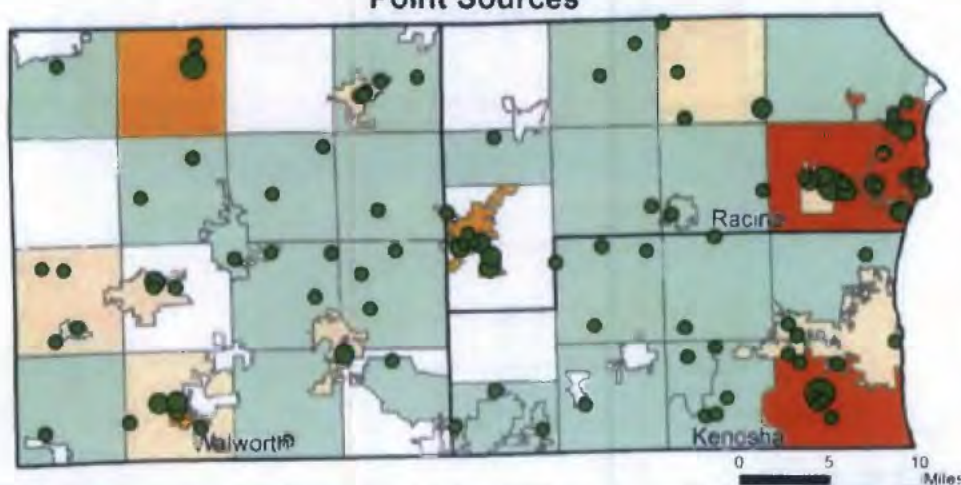
VOC Emissions in MCDs



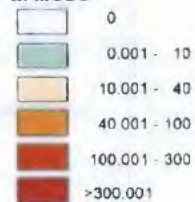
Walworth_Racine_Kenosha: Sub-county level NOx Emissions-2014
Point Sources



Walworth_Racine_Kenosha: Sub-county level VOC Emissions-2014
Point Sources



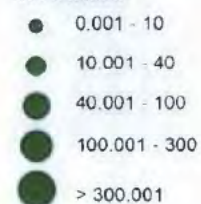
NOx or VOC Emissions
in MCDs



NOx Emissions (TPY)
at Facilities



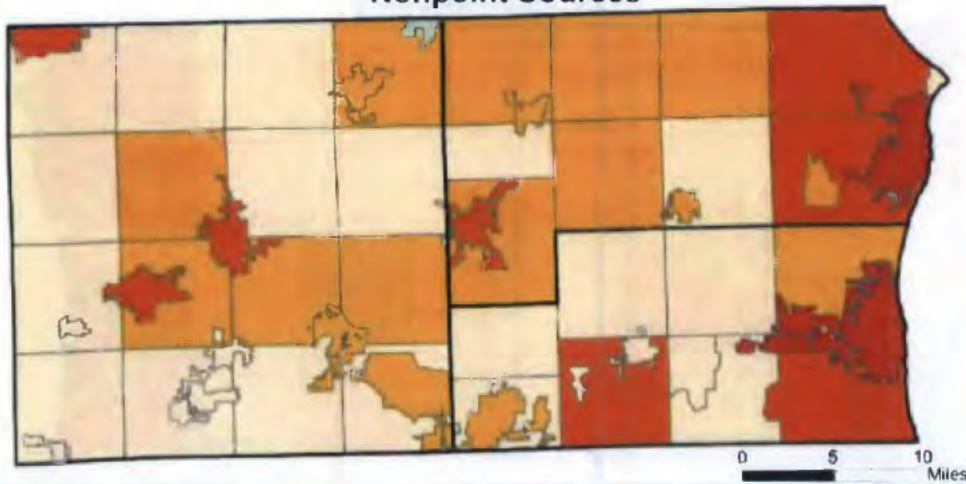
VOC Emissions (TPY)
at Facilities



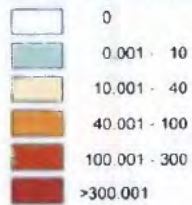
Walworth_Racine_Kenosha: Sub-county level NOx Emissions-2014
Nonpoint Sources



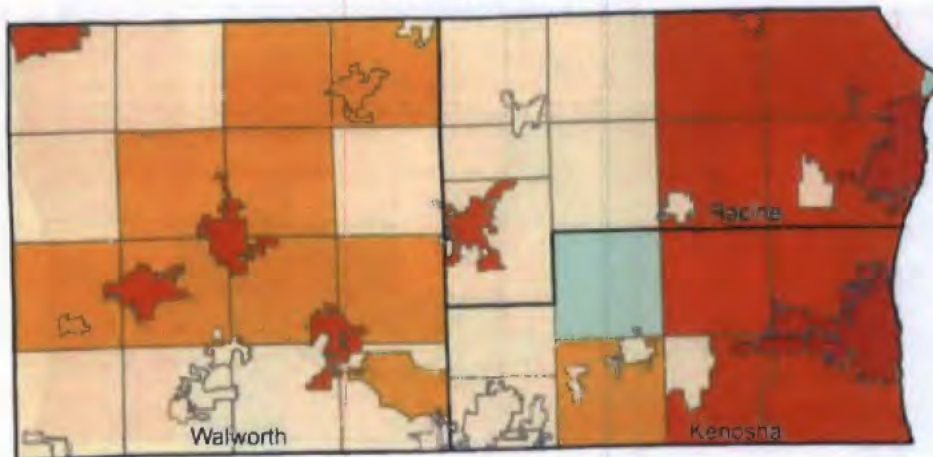
Walworth_Racine_Kenosha: Sub-county level VOC Emissions-2014
Nonpoint Sources



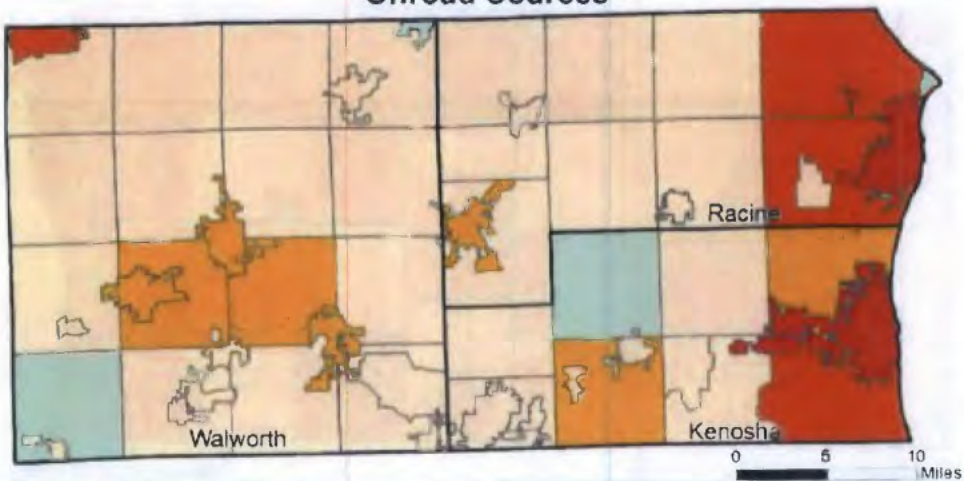
NOx or VOC Emissions in MCDs



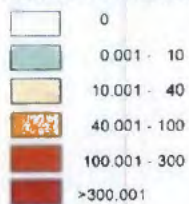
Walworth_Racine_Kenosha: Sub-county level NOx Emissions-2014
Onroad Sources



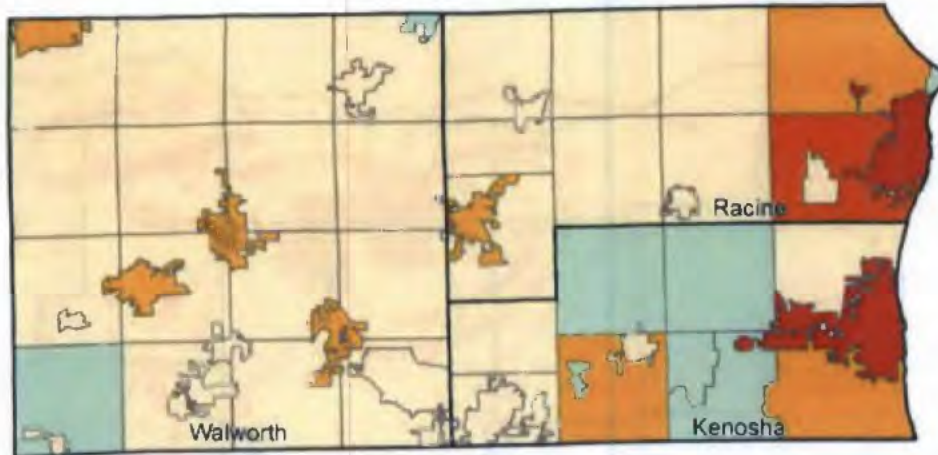
Walworth_Racine_Kenosha: Sub-county level VOC Emissions-2014
Onroad Sources



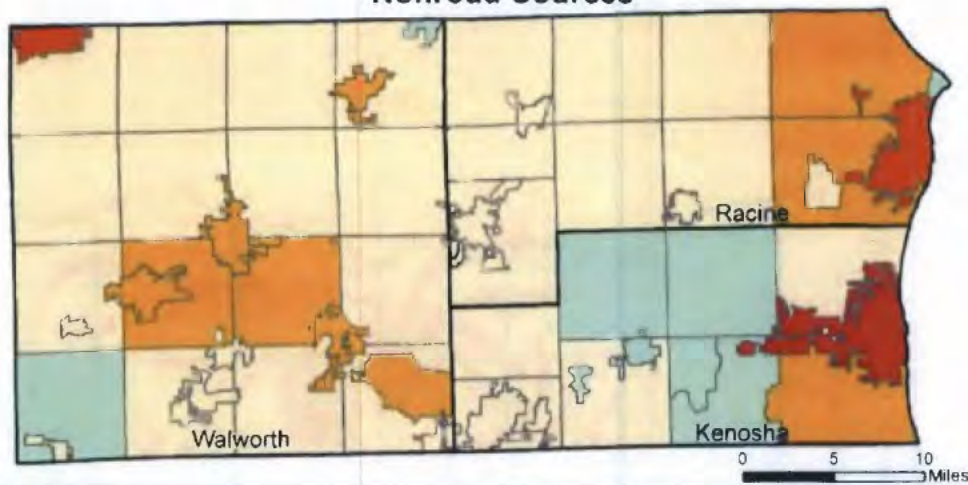
NOx or VOC Emissions in MCDs



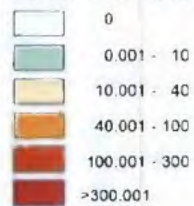
Walworth_Racine_Kenosha: Sub-county level NOx Emissions-2014
Nonroad Sources



Walworth_Racine_Kenosha: Sub-county level VOC Emissions-2014
Nonroad Sources



NOx or VOC Emissions in MCDs



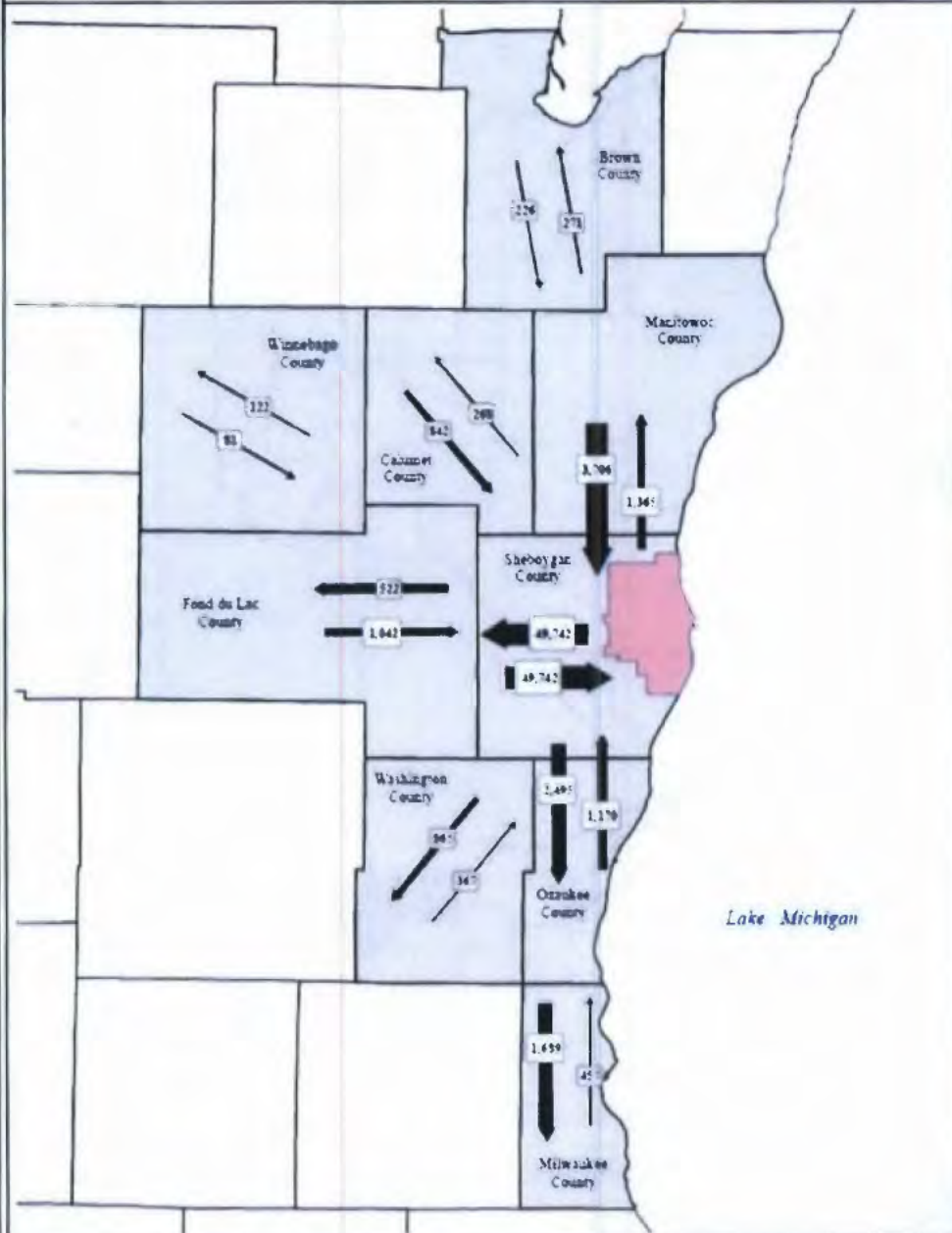
Travel between Southeast Wisconsin counties (Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington, and Waukesha)

AVERAGE WEEKDAY PERSON TRIPS BETWEEN COUNTIES IN THE REGION: 1963, 1972, 1991, 2001, and 2011



Daily Workplace Commuters Sheboygan County Year 2045 Sheboygan Area Transportation Plan (SATP)

Map 5.17



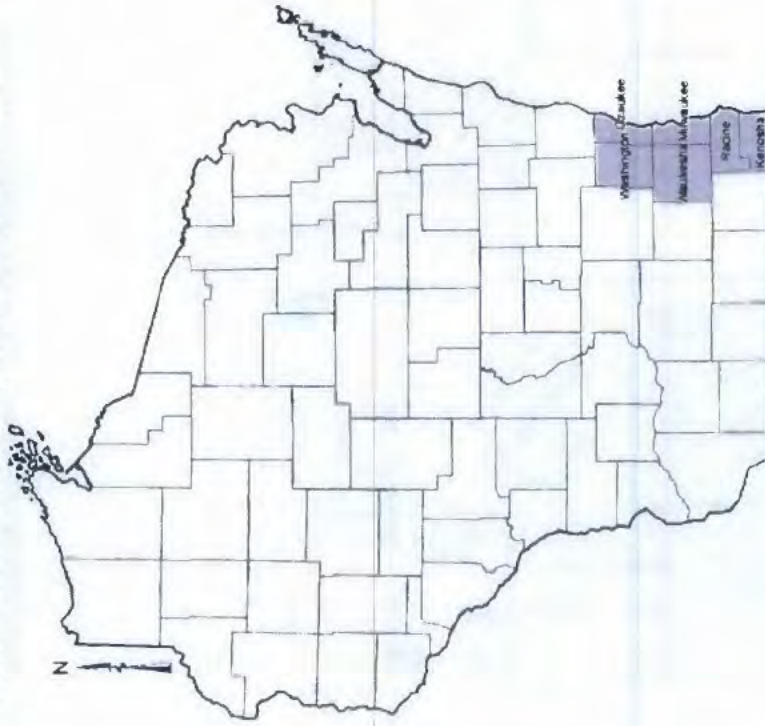
Sheboygan Metropolitan Planning Area Boundary



Wisconsin Counties Subject to
Vehicle Emission Inspection Program



Wisconsin Counties Subject to
Reformulated Gas (RfG) Requirements



The Clean Air Act of 1990 established the RfG program and specifically requires use of RfG in these counties.

Original
to be filed/^{submitted} at
EPA
Office of the Administrator

The Honorable Scott Pruitt
Congressionally Confirmed Administrator
The Honorable Catherine E. McCabe
Acting Administrator U.S. EPA
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460



January 30, 2017

The Honorable E. Scott Pruitt, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, DC 20460

RECEIVED
2017 FEB 23 PM 12:58
OFFICE OF THE
EXECUTIVE SECRETARY

Dear Administrator Pruitt:

The Texas Alliance for Responsible Growth, Environment and Transportation (TARGET) wish to congratulate you on your appointment as Administrator of the U.S. Environmental Protection Agency. We look forward to supporting your efforts to reform the EPA and its extreme policies that have grossly exceeded its statutory authority and threatened individual liberty.

TARGET is a broad coalition of industry groups, including homebuilders & developers, commercial developers, economic development organizations, and transportation advocates. We write to you today to voice our extreme concerns with the EPA's Waters of the U.S. rule (WOTUS). As you know, the WOTUS rule drastically expands the EPA's jurisdiction, making small waterways like wetlands and ponds subject to federal rules and permitting processes. We applaud your actions as the attorney general of Oklahoma to legally challenge the rule and block EPA's attempt to broaden its authority by redefining "Waters of the U.S." beyond the scope of what was originally intended by Congress.

The ramifications of the current rule are enormous for business - especially for the homebuilding, land development, construction, and transportation infrastructure sectors. The U.S. Chamber of Commerce concludes that under the new rule, "virtually any business that owns or operates a facility or has property would be adversely affected, particularly if it has ditches, retention ponds for storm water runoff, fire/dust suppression ponds, or other surface impoundments on site."

One particularly onerous part of the rule is the Texas Coastal Prairie Wetlands provision. Because of this portion of the rule regulators are now told they must consider each wetland on case-by-case basis as a part of a larger undefined system regardless of their distance from other regulated waters.

The Texas portion of the WOTUS rule is a broad, subjective, "catch-all" approach by regulators to establish jurisdiction over vast swaths of land. This will severely threaten individual property rights, deter business investment, impact home affordability, discourage relocation of new businesses, and would limit or even eliminate expansion of local business operations.

Last year TARGET joined other business organizations and filed a lawsuit to stop the rule. Thankfully, as you well know, a nationwide stay has been placed on the rule by the U.S. Court of Appeals for the Sixth Circuit, but it could be years until this litigation is settled.

January 30, 2017

Page 2

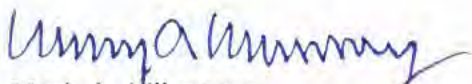
Meanwhile, impacted businesses across the country, and the Texas coastal area, are left with uncertainty and faced with the EPA's attempts to implement the rule through a piecemeal approach.

If the new rule is allowed to stand, land use options will be restricted, financing of projects will be jeopardized, permitting and compliance costs will significantly increase, regulatory uncertainty and construction delays will take place, and mitigation costs for developers will increase because the new rule will make it easier for the EPA to regulate more private property located along the Texas Gulf Coast.

We urge you to withdraw the implementation of the unlawful WOTUS rule and work with Congress, states, and impacted stakeholders to consider regulatory or legislative alternatives that will provide a sensible solution and clarify the scope of the Clean Water Act.

Thank you for your consideration of our comments and we greatly appreciate your commitment to protect property rights and preserve the economic vitality of our nation.

Sincerely,



Mark A. Kilkenny
Chairman, TARGET

Members:

Associated Builders and Contractors of Houston

Associated General Contractors of Texas (Highway)

Greater Fort Bend Economic Development Council

Greater Houston Builders Association

Houston Council of Engineering Companies

The Houston Real Estate Council



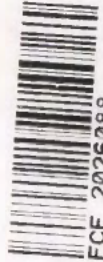
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The Honorable E. Scott Pruitt, Administrator
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1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, DC 20460



FCF 2026088

Mon Feb 27 17:14:25 EST 2017
Pruitt.Scott@epamail.epa.gov
Fw: Request to Withdraw Final Determination Re. MY 2022-2025 GHG Standards
To: CMS.OEX@epamail.epa.gov

From: Julia Rege <JRege@globalautomakers.org>
Sent: Tuesday, February 21, 2017 3:18 PM
To: Pruitt, Scott; pruittgscott@epa.gov
Cc: John Bozzella; secretaryscheduler@dot.gov; Grundler, Christopher; Charmley, William; Olechiw, Michael; Rebecca S. Yoon; James Tamm; Kevin.Green@dot.gov; Alberto.Ayala@arb.ca.gov; Ellen Gleberman; Charles Haake; Annemarie Pender
Subject: Request to Withdraw Final Determination Re. MY 2022-2025 GHG Standards

Dear Administrator Pruitt:

On behalf of John Bozzella, President and CEO of Global Automakers, I am sending you the attached correspondence related to the EPA's Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation, which was announced by the Agency on January 13, 2017. A hard copy of this letter has been sent to your office via FedEx as well.

We welcome the opportunity to further discuss this matter with you at your earliest convenience.

Sincerely, Julia

Julia M. Rege
Director, Environment & Energy
Association of Global Automakers, Inc. (Global Automakers)
1050 K Street, NW, Suite 650
Washington, DC 20001
202.650.5559 (direct)
202.650.5555 (main)
jrege@globalautomakers.org



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Aston Martin • Ferrari • Honda • Hyundai • Isuzu • Kia
Maserati • McLaren • Nissan • Subaru • Suzuki • Toyota

A. Background

On January 12, 2017—just one week before the end of the previous administration—EPA published its final Determination concerning whether the GHG emissions standards currently on the books for MY 2022-2025 remain appropriate. This Determination was part of a “Midterm Evaluation” of those standards, a key protective mechanism that was included, at the insistence of the auto industry as a condition of its support of these regulations, in the 2012 joint EPA and NHTSA rule setting fuel economy and GHG emission standards covering MY 2017 through 2025.² Given that NHTSA is statutorily prevented from promulgating fuel economy standards governing more than a five-year period, and that the EPA standards were being set more than ten years into the future, having an objective and data-driven Midterm Evaluation is necessary to ensure that the future standards are feasible, cost-effective, and achieve the goals of the two relevant statutes under the One National Program.

Throughout the process of the Midterm Evaluation, both EPA and NHTSA made several commitments to the stakeholders. First, the agencies promised to remain aligned from both a procedural and substantive standpoint.³ As was the case with the 2012 rulemaking, during the Midterm Evaluation the agencies were to jointly issue a proposed rulemaking/determination and a final rulemaking/determination. This was necessary to ensure that One National Program is maintained and to protect manufacturers from having to comply with multiple inconsistent standards.

Second, EPA and NHTSA consistently stated that the final NHTSA rule and EPA determination were expected by April 1, 2018,⁴ with a proposed rule and a proposed determination expected in the summer of 2017.⁵ This timeline would allow the agencies to account for the most up-to-date and robust information concerning the light-duty fleet and the costs and effectiveness of the technologies needed to meet the standards. In developing information for the record, in allocating scarce automotive engineering

² See 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62,624 (Oct. 15, 2012). The State of California has its own GHG emission standards for light duty vehicles, but has amended its regulations to include a “deemed-to-comply” provision whereby automakers could show compliance with its state GHG emission standards by complying with EPA GHG regulations. Together, the California regulations and the EPA/NHTSA standards are referred to as the “One National Program.”

³ See 77 Fed. Reg. at 62,633 (stating that EPA and NHTSA will act jointly in their proposed and final rulemaking in the Midterm Evaluation “[i]n order to align the agencies’ proceedings for MYs 2022–2025 and to maintain a joint national program.”)

⁴ *Id.*

⁵ See <https://www.epa.gov/sites/production/files/2016-10/documents/grundler-sae-naipc-2015-09-17-presentation.pdf> at 24 (indicating that the EPA Proposed Determination and NHTSA notice of proposed rulemaking would be released mid-2017 and the final determination made in April 2018).

resources, and in the expenditure of considerable sums, the industry relied upon this schedule and these repeated representations.

Finally, both EPA and NHTSA committed to a collaborative process that would fully account for the input of all stakeholders. To achieve this, the agencies stated that they would provide periods of public comment on the draft Technical Assessment Report (TAR) that EPA and NHTSA compiled in collaboration with the California Air Resources Board (CARB), and a separate period of comment with respect to EPA's and NHTSA's proposals concerning the MY 2022-2025 standards.⁶ Given that the agencies' actions on this matter would affect billions of dollars of investments on the part of automakers as well as the types of vehicles that would be made available to customers for years (if not decades) to come, it is critically important that the agencies get it right.

Despite this carefully constructed (and fully promised) process, EPA unilaterally reversed course 22 days after the Presidential Election. On November 30, 2016, EPA abruptly announced that it was abandoning its previously committed-to plan on the Midterm Evaluation and published a lengthy "Proposed Determination" concerning the appropriateness of the MY 2022-2025 GHG standards. Signaling its new intent to rush through a final Determination before the end of the Obama Administration, EPA provided stakeholders with just 30 days from the release of the Proposed Determination on EPA's website to provide comments (which was only 24 days from the date the Proposed Determination was published in the Federal Register⁷). EPA was informed by many stakeholders that this comment period was far too short for an action of this magnitude and included a holiday period when many automakers are closed. Nevertheless, EPA's Final Determination was released on January 12, 2017.

When EPA announced the Proposed Determination, it styled its action as a "proposed adjudicatory determination."⁸ EPA therefore took the position that its Determination could escape both the procedural requirements of Section 307 of the Clean Air Act⁹ and the rulemaking provisions of the Administrative Procedures Act (APA).¹⁰ In the Final Determination and Response to Comment, EPA rejected the argument made by Global Automakers and many other stakeholders that the Determination amounted to a rulemaking because it is a prospective action setting agency policy.¹¹ Consistent with its position that the Determination is not a rulemaking, EPA has not published the Determination in the Federal Register.

⁶ 77 Fed. Reg. at 62,784.

⁷ 81 Fed. Reg. 87,927 (Dec. 6, 2016).

⁸ See Proposed Determination at ES-2 and 2 n.2.

⁹ 42 U.S.C. § 7607(d)

¹⁰ 5 U.S.C. § 553

¹¹ See EPA Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation at 11, n.20.

B. EPA Has Ample Authority to Reconsider the Determination

Regardless of whether the Final Determination is considered a rule or an adjudication, this EPA has the authority to withdraw and reconsider it. In the event that the Determination is an adjudication (as the prior EPA claimed), then the agency has inherent authority to reconsider that decision. “It is widely accepted that an agency may, on its own initiative, reconsider its interim or even its final decisions, regardless of whether the applicable statute and agency regulations expressly provide for such review.”¹² This is especially true where the underlying determination has “serious procedural and substantive deficiencies.”¹³ Unless a statute expressly limits an agency’s authority to reconsider its decisions—which is not the case here—then the agency may freely do so as long as reconsideration occurs within a reasonable time after the first decision and notice of the agency’s intent to reconsider is given to the parties.¹⁴

In the event that the Determination did amount to a rulemaking, then it is subject to withdrawal and reconsideration for two separate and independent reasons. First, the Federal Register Act requires that all documents of “general applicability and legal effect” be published in the Federal Register.¹⁵ The EPA Final Determination has not been published in the Federal Register in contravention of this clear requirement. Thus, under President Trump’s Memorandum for the Heads of Executive Departments and Agencies; Regulatory Freeze Pending Review,¹⁶ if viewed as a rule the Final Determination can and should be withdrawn by the new Administration.

Second, an agency has inherent power to withdraw and reconsider a rule that suffers from fatal legal and procedural flaws.¹⁷ Adhering to the proper procedures is a fundamental prerequisite for valid rulemaking.¹⁸ Here, the Determination is invalid as a rule because EPA did not follow any of the procedural requirements set forth in Section 307(d) of the Clean Air Act. EPA did not convene a hearing to allow interested persons to comment on the Proposed Determination, and did keep the record of the proceedings open for 30 days to provide an opportunity for interested persons to submit rebuttal and supplementary information to the

¹² *Dun & Bradstreet Corp. Found. v. United States Postal Serv.*, 946 F.2d 189, 193 (2d Cir. 1991). *See also ConocoPhillips Co. v. United States EPA*, 612 F.3d 822, 832 (5th Cir. 2010) (“Embedded in an agency’s power to make a decision is its power to reconsider that decision.”); *Gun South, Inc. v. Brady*, 877 F.2d 858 (11th Cir. 1989) (holding that Bureau of Alcohol, Tobacco, and Firearms had the implied authority to correct the erroneous approval of firearms import application).

¹³ *Belville Mining Co. v. United States*, 999 F.2d 989, 998 (6th Cir. 1993).

¹⁴ *Dun & Bradstreet*, 946 F.2d at 193.

¹⁵ 44 USC 1505(a)(2).

¹⁶ 82 Fed. Reg. 8346 (Jan. 24, 2017).

¹⁷ *Citizens Against the Pellissippi Parkway v. Mineta*, 375 F.3d 412, 416 (6th Cir. 2004).

¹⁸ *United States v. Utesch*, 596 F.3d 302, 312 (6th Cir. 2010) (stating that a “reviewing court must focus not merely on the ultimate rule but on the process of an administrative rulemaking; otherwise, an agency could always violate the APA’s procedural requirements based on the representation that it would have adopted the same rule had the proper process been followed.”)

record.¹⁹ Presumably, the prior EPA ignored these requirements because to follow them would have prevented the agency from finalizing the Determination before the end of the Obama Administration. But politics is not a reason for running roughshod over important procedural protections found in the Clean Air Act.

C. EPA Should Withdraw the Determination and Reopen the Rulemaking Record to Maintain the One National Program EPA Promised

EPA's Determination is a significant action by the agency that will have far-reaching ramifications for the industry and the automobile driving public. EPA readily concedes that the MY 2022-2025 standards will increase the prices of new motor vehicles by a substantial amount (according to EPA's own estimates), and will impact the types of vehicles sold in the U.S. An action of this magnitude requires a thoughtful and collaborative decision-making process. Here, however, EPA opted for political expediency instead, and jammed through a Final Determination in the waning days of the lame-duck Administration.

The EPA Determination suffers from many procedural and substantive flaws, any one of which would justify withdrawing the rule and reopening the rulemaking record. Among them are:

- Failure to follow EPA regulations requiring coordination with NHTSA. The Midterm Evaluation was designed so that the actions of EPA and NHTSA would be carefully coordinated every step of the way. As explained in the preamble to the 2012 rulemaking, "[i]n order to align the agencies' proceedings for MYs 2022–2025 and to maintain a joint national program, if the EPA determination is that its standards will not change, NHTSA will issue its final rule concurrently with the EPA determination."²⁰ This requirement is codified at 40 C.F.R. § 86.1818-12(h)(1)(vii), which requires EPA's Midterm Evaluation to account for "[t]he impact of the greenhouse gas emission standards on the Corporate Average Fuel Economy standards and a national harmonized program." Without providing any justification for its doing so, EPA violated this central tenet of the Midterm Evaluation by finalizing its Determination more than a year before NHTSA's rulemaking is expected to be completed and acted contrary to its own regulations. NHTSA is currently in the middle of its rulemaking process for MY 2022-2025 fuel economy standards, and its decision will be based on more up-to-date information than EPA's. Consequently, there is a risk that NHTSA will reach a different conclusion from EPA concerning appropriate standards for MY 2022-2025. This is the antithesis of the One National Program that EPA agreed to.

- Needlessly accelerating the timeline for the GHG Midterm Evaluation. Prior to November 2016, EPA had repeatedly represented that it would propose its determination/rulemaking in the summer of 2017 and finalize its actions by April 2018. Based on these representations, Global Automakers and other

¹⁹ 42 U.S.C. § 307(d)(5).

²⁰ 77 Fed. Reg. at 62,633.

members of the auto industry commissioned several studies concerning the baseline light duty fleets and the technologies necessary to meet the current MY 2022-2025 standards. EPA was informed that these studies will be important for its determination but would not be complete until the promised mid-2017 timeframe. Additionally, EPA was urged to delay its actions so that it could account for the most up-to-date information concerning the technologies needed to meet the standards, their costs, and their impacts on consumers—as NHTSA is doing with its rulemaking. EPA ignored these calls and finalized its determination based on a record that was far from complete solely to rob the incoming Administration of an opportunity to have input on this important matter.

- Failure to provide an adequate period for public comment. The Proposed Determination and the accompanying Technical Support Document consisted of almost 1,000 pages, and cited almost 1,100 references, many of which are new or significantly revised since the earlier Draft TAR. Additionally, EPA conducted 102 new runs of the computer models it uses to assess the effectiveness of fuel saving technologies. Thirty days is an insufficient time period for stakeholders to fully review, analyze, and prepare detailed comments on an action as significant and complex as EPA’s Determination – especially in light of the intervening national holidays. EPA offered no reasoned explanation as to why it was short-circuiting the comment period on such an important agency action.

- Failure to address the GHG emission program as a whole. In its rush to finalize its Determination, EPA answered only half the question, *i.e.*, whether the numeric standards expressed in the footprint-based curves remain appropriate. However, the GHG regulations also include program flexibilities that automakers rely on to meet the standards. These flexibilities provide incentives for the early adoption of advanced fuel-saving technologies and help manufacturers smooth out annual variability in compliance over several model years. They are an important aspect of the One National Program, and they provide real and lasting environmental benefits. EPA’s failure to look at the entire program as a whole was inconsistent with the very purpose of the Midterm Evaluation.

- Failure to respond adequately to comments concerning consumer acceptance, cost and technology effectiveness. EPA received more than 100,000 public comments on the Proposed Determination.²¹ Many of the comments from industry focused on the extent to which lack of consumer acceptance may impact the ability to achieve the standards, as well as the costs and effectiveness of the necessary technologies. The fact that EPA finalized its Determination a mere **13 days** after the close of the comment period demonstrates that the agency could not have adequately responded to all of these comments. Indeed, a review of the final Determination and the Response to Comments reveals that EPA did not provide adequate responses to the many comments given.

²¹ See Determination at 1.

EPA's determination as to the appropriateness of the GHG emission standards for MY 2022 through 2025 was a significant action that will have wide-ranging implications for the automobile industry and the car-buying public. It was therefore important that EPA reach its decision based on an open and collaborative process, and only after fully considering all of the most up-to-date information concerning the costs and feasibility of the technologies necessary to meet the standards. Rather than adhering to such a process that it had agreed to and promised in 2012, EPA rushed through a Final Determination at the very end of the previous Administration. Therefore, we respectfully request that EPA: (a) withdraw the Determination, (b) reopen the record on the Midterm Evaluation, and (c) reset the timetable for EPA's actions so that they align with NHTSA's rulemaking.

Thank you for your prompt consideration of this matter.

Sincerely,



John Bozzella
President and CEO
Association of Global Automakers

cc: Secretary Elaine Chao, DOT
Kevin Green, DOT
Bill Charmley, EPA
Chris Grundler, EPA
Michael Olechiw, EPA
Rebecca Yoon, NHTSA
James Tamm, NHTSA
Alberto Ayala, CARB

February 21, 2017

Scott Pruitt
Administrator
Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, N.W.
Washington DC 20460

PRE
2017 FEB 23 PM 12:58
OFFICE OF THE
EXECUTIVE SECRETARY

Attention: Docket ID No. EPA-HQ-OAR-2015-0827

RE: Petition for Reconsideration and Request to Withdraw Final Determination on the Appropriateness of the Model Year 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (January 12, 2017)

Dear Administrator Pruitt:

The Association of Global Automakers, Inc. (Global Automakers)¹ respectfully petitions the United States Environmental Protection Agency (EPA) to reconsider its final Determination on the Appropriateness of the Model Year 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (the "Determination"), and requests that the Determination be withdrawn. As explained below, EPA's premature Determination suffers from a multitude of procedural and substantive flaws. Most importantly, it is inconsistent with the coordinated process to which EPA committed in 2012 to ensure the development of "One National Program" to regulate fuel economy and greenhouse gas (GHG) emissions in coordination with the National Highway Traffic Safety Administration (NHTSA). Consequently, we are requesting that EPA withdraw the Determination and reopen the record so that EPA's rulemaking concerning GHG emission standards for model years (MY) 2022-2025 can be aligned with fuel economy rulemaking currently underway at NHTSA for those years.

¹ The Association of Global Automakers represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Our member companies have invested \$56 billion in U.S.-based facilities, directly employ nearly 100,000 Americans, and sell 47 percent of all new vehicles purchased annually in the country. Combined, our members operate more than 300 production, design, R&D, sales, finance and other facilities across the United States. Working with industry leaders, legislators, and regulators in the United States, Global Automakers aims to create public policies that improve motor vehicle safety, encourage technological innovation, and protect our planet. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans' quality of life. For more information, please visit www.globalautomakers.org.

A. Background

On January 12, 2017—just one week before the end of the previous administration—EPA published its final Determination concerning whether the GHG emissions standards currently on the books for MY 2022-2025 remain appropriate. This Determination was part of a “Midterm Evaluation” of those standards, a key protective mechanism that was included, at the insistence of the auto industry as a condition of its support of these regulations, in the 2012 joint EPA and NHTSA rule setting fuel economy and GHG emission standards covering MY 2017 through 2025.² Given that NHTSA is statutorily prevented from promulgating fuel economy standards governing more than a five-year period, and that the EPA standards were being set more than ten years into the future, having an objective and data-driven Midterm Evaluation is necessary to ensure that the future standards are feasible, cost-effective, and achieve the goals of the two relevant statutes under the One National Program.

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³ See 77 Fed. Reg. at 62,633 (stating that EPA and NHTSA will act jointly in their proposed and final rulemaking in the Midterm Evaluation “[i]n order to align the agencies’ proceedings for MYs 2022–2025 and to maintain a joint national program.”)

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Finally, both EPA and NHTSA committed to a collaborative process that would fully account for the input of all stakeholders. To achieve this, the agencies stated that they would provide periods of public comment on the draft Technical Assessment Report (TAR) that EPA and NHTSA compiled in collaboration with the California Air Resources Board (CARB), and a separate period of comment with respect to EPA's and NHTSA's proposals concerning the MY 2022-2025 standards.⁶ Given that the agencies' actions on this matter would affect billions of dollars of investments on the part of automakers as well as the types of vehicles that would be made available to customers for years (if not decades) to come, it is critically important that the agencies get it right.

Despite this carefully constructed (and fully promised) process, EPA unilaterally reversed course 22 days after the Presidential Election. On November 30, 2016, EPA abruptly announced that it was abandoning its previously committed-to plan on the Midterm Evaluation and published a lengthy "Proposed Determination" concerning the appropriateness of the MY 2022-2025 GHG standards. Signaling its new intent to rush through a final Determination before the end of the Obama Administration, EPA provided stakeholders with just 30 days from the release of the Proposed Determination on EPA's website to provide comments (which was only 24 days from the date the Proposed Determination was published in the Federal Register⁷). EPA was informed by many stakeholders that this comment period was far too short for an action of this magnitude and included a holiday period when many automakers are closed. Nevertheless, EPA's Final Determination was released on January 12, 2017.

When EPA announced the Proposed Determination, it styled its action as a "proposed adjudicatory determination."⁸ EPA therefore took the position that its Determination could escape both the procedural requirements of Section 307 of the Clean Air Act⁹ and the rulemaking provisions of the Administrative Procedures Act (APA).¹⁰ In the Final Determination and Response to Comment, EPA rejected the argument made by Global Automakers and many other stakeholders that the Determination amounted to a rulemaking because it is a prospective action setting agency policy.¹¹ Consistent with its position that the Determination is not a rulemaking, EPA has not published the Determination in the Federal Register.

⁶ 77 Fed. Reg. at 62,784.

⁷ 81 Fed. Reg. 87,927 (Dec. 6, 2016).

⁸ See Proposed Determination at ES-2 and 2 n.2.

⁹ 42 U.S.C. § 7607(d)

¹⁰ 5 U.S.C. § 553

¹¹ See EPA Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation at 11, n.20.

B. EPA Has Ample Authority to Reconsider the Determination

Regardless of whether the Final Determination is considered a rule or an adjudication, this EPA has the authority to withdraw and reconsider it. In the event that the Determination is an adjudication (as the prior EPA claimed), then the agency has inherent authority to reconsider that decision. “It is widely accepted that an agency may, on its own initiative, reconsider its interim or even its final decisions, regardless of whether the applicable statute and agency regulations expressly provide for such review.”¹² This is especially true where the underlying determination has “serious procedural and substantive deficiencies.”¹³ Unless a statute expressly limits an agency’s authority to reconsider its decisions—which is not the case here—then the agency may freely do so as long as reconsideration occurs within a reasonable time after the first decision and notice of the agency’s intent to reconsider is given to the parties.¹⁴

In the event that the Determination did amount to a rulemaking, then it is subject to withdrawal and reconsideration for two separate and independent reasons. First, the Federal Register Act requires that all documents of “general applicability and legal effect” be published in the Federal Register.¹⁵ The EPA Final Determination has not been published in the Federal Register in contravention of this clear requirement. Thus, under President Trump’s Memorandum for the Heads of Executive Departments and Agencies; Regulatory Freeze Pending Review,¹⁶ if viewed as a rule the Final Determination can and should be withdrawn by the new Administration.

Second, an agency has inherent power to withdraw and reconsider a rule that suffers from fatal legal and procedural flaws.¹⁷ Adhering to the proper procedures is a fundamental prerequisite for valid rulemaking.¹⁸ Here, the Determination is invalid as a rule because EPA did not follow any of the procedural requirements set forth in Section 307(d) of the Clean Air Act. EPA did not convene a hearing to allow interested persons to comment on the Proposed Determination, and did keep the record of the proceedings open for 30 days to provide an opportunity for interested persons to submit rebuttal and supplementary information to the

¹² *Dun & Bradstreet Corp. Found. v. United States Postal Serv.*, 946 F.2d 189, 193 (2d Cir. 1991). See also *ConocoPhillips Co. v. United States EPA*, 612 F.3d 822, 832 (5th Cir. 2010) (“Embedded in an agency’s power to make a decision is its power to reconsider that decision.”); *Gun South, Inc. v. Brady*, 877 F.2d 858 (11th Cir. 1989) (holding that Bureau of Alcohol, Tobacco, and Firearms had the implied authority to correct the erroneous approval of firearms import application).

¹³ *Belville Mining Co. v. United States*, 999 F.2d 989, 998 (6th Cir. 1993).

¹⁴ *Dun & Bradstreet*, 946 F.2d at 193.

¹⁵ 44 USC 1505(a)(2).

¹⁶ 82 Fed. Reg. 8346 (Jan. 24, 2017).

¹⁷ *Citizens Against the Pellissippi Parkway v. Mineta*, 375 F.3d 412, 416 (6th Cir. 2004).

¹⁸ *United States v. Utesch*, 596 F.3d 302, 312 (6th Cir. 2010) (stating that a “reviewing court must focus not merely on the ultimate rule but on the process of an administrative rulemaking; otherwise, an agency could always violate the APA’s procedural requirements based on the representation that it would have adopted the same rule had the proper process been followed.”)

record.¹⁹ Presumably, the prior EPA ignored these requirements because to follow them would have prevented the agency from finalizing the Determination before the end of the Obama Administration. But politics is not a reason for running roughshod over important procedural protections found in the Clean Air Act.

C. EPA Should Withdraw the Determination and Reopen the Rulemaking Record to Maintain the One National Program EPA Promised

EPA's Determination is a significant action by the agency that will have far-reaching ramifications for the industry and the automobile driving public. EPA readily concedes that the MY 2022-2025 standards will increase the prices of new motor vehicles by a substantial amount (according to EPA's own estimates), and will impact the types of vehicles sold in the U.S. An action of this magnitude requires a thoughtful and collaborative decision-making process. Here, however, EPA opted for political expediency instead, and jammed through a Final Determination in the waning days of the lame-duck Administration.

The EPA Determination suffers from many procedural and substantive flaws, any one of which would justify withdrawing the rule and reopening the rulemaking record. Among them are:

- Failure to follow EPA regulations requiring coordination with NHTSA. The Midterm Evaluation was designed so that the actions of EPA and NHTSA would be carefully coordinated every step of the way. As explained in the preamble to the 2012 rulemaking, "[i]n order to align the agencies' proceedings for MYs 2022–2025 and to maintain a joint national program, if the EPA determination is that its standards will not change, NHTSA will issue its final rule concurrently with the EPA determination."²⁰ This requirement is codified at 40 C.F.R. § 86.1818-12(h)(1)(vii), which requires EPA's Midterm Evaluation to account for "[t]he impact of the greenhouse gas emission standards on the Corporate Average Fuel Economy standards and a national harmonized program." Without providing any justification for its doing so, EPA violated this central tenet of the Midterm Evaluation by finalizing its Determination more than a year before NHTSA's rulemaking is expected to be completed and acted contrary to its own regulations. NHTSA is currently in the middle of its rulemaking process for MY 2022-2025 fuel economy standards, and its decision will be based on more up-to-date information than EPA's. Consequently, there is a risk that NHTSA will reach a different conclusion from EPA concerning appropriate standards for MY 2022-2025. This is the antithesis of the One National Program that EPA agreed to.

- Needlessly accelerating the timeline for the GHG Midterm Evaluation. Prior to November 2016, EPA had repeatedly represented that it would propose its determination/rulemaking in the summer of 2017 and finalize its actions by April 2018. Based on these representations, Global Automakers and other

¹⁹ 42 U.S.C. § 307(d)(5).

²⁰ 77 Fed. Reg. at 62,633.

members of the auto industry commissioned several studies concerning the baseline light duty fleets and the technologies necessary to meet the current MY 2022-2025 standards. EPA was informed that these studies will be important for its determination but would not be complete until the promised mid-2017 timeframe. Additionally, EPA was urged to delay its actions so that it could account for the most up-to-date information concerning the technologies needed to meet the standards, their costs, and their impacts on consumers—as NHTSA is doing with its rulemaking. EPA ignored these calls and finalized its determination based on a record that was far from complete solely to rob the incoming Administration of an opportunity to have input on this important matter.

- Failure to provide an adequate period for public comment. The Proposed Determination and the accompanying Technical Support Document consisted of almost 1,000 pages, and cited almost 1,100 references, many of which are new or significantly revised since the earlier Draft TAR. Additionally, EPA conducted 102 new runs of the computer models it uses to assess the effectiveness of fuel saving technologies. Thirty days is an insufficient time period for stakeholders to fully review, analyze, and prepare detailed comments on an action as significant and complex as EPA's Determination – especially in light of the intervening national holidays. EPA offered no reasoned explanation as to why it was short-circuiting the comment period on such an important agency action.

- Failure to address the GHG emission program as a whole. In its rush to finalize its Determination, EPA answered only half the question, *i.e.*, whether the numeric standards expressed in the footprint-based curves remain appropriate. However, the GHG regulations also include program flexibilities that automakers rely on to meet the standards. These flexibilities provide incentives for the early adoption of advanced fuel-saving technologies and help manufacturers smooth out annual variability in compliance over several model years. They are an important aspect of the One National Program, and they provide real and lasting environmental benefits. EPA's failure to look at the entire program as a whole was inconsistent with the very purpose of the Midterm Evaluation.

- Failure to respond adequately to comments concerning consumer acceptance, cost and technology effectiveness. EPA received more than 100,000 public comments on the Proposed Determination.²¹ Many of the comments from industry focused on the extent to which lack of consumer acceptance may impact the ability to achieve the standards, as well as the costs and effectiveness of the necessary technologies. The fact that EPA finalized its Determination a mere **13 days** after the close of the comment period demonstrates that the agency could not have adequately responded to all of these comments. Indeed, a review of the final Determination and the Response to Comments reveals that EPA did not provide adequate responses to the many comments given.

²¹ See Determination at 1.

EPA's determination as to the appropriateness of the GHG emission standards for MY 2022 through 2025 was a significant action that will have wide-ranging implications for the automobile industry and the car-buying public. It was therefore important that EPA reach its decision based on an open and collaborative process, and only after fully considering all of the most up-to-date information concerning the costs and feasibility of the technologies necessary to meet the standards. Rather than adhering to such a process that it had agreed to and promised in 2012, EPA rushed through a Final Determination at the very end of the previous Administration. Therefore, we respectfully request that EPA: (a) withdraw the Determination, (b) reopen the record on the Midterm Evaluation, and (c) reset the timetable for EPA's actions so that they align with NHTSA's rulemaking.

Thank you for your prompt consideration of this matter.

Sincerely,



John Bozzella
President and CEO
Association of Global Automakers

cc: Secretary Elaine Chao, DOT
Kevin Green, DOT
Bill Charmley, EPA
Chris Grundler, EPA
Michael Olechiw, EPA
Rebecca Yoon, NHTSA
James Tamm, NHTSA
Alberto Ayala, CARB

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